



THE MUSLIM AS A EUROPEAN CITIZEN

By

Judge Sheikh Faysal Maulawi

Al Maktoum Foundation 2012

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ACKNOWLEDGE AND EXTEND
OUR HEARTFELT GRATITUDE AND
APPRECIATION TO
HIS HIGHNESS
SHEIKH HAMDAN BIN RASHID
AL MAKTOUM
THE PATRON OF
AL MAKTOUM FOUNDATION
FOR HIS CONTINUOUS SUPPORT
AND GENEROSITY.

Introduction to the English Edition

The Islamic Cultural Centre of Ireland has the pleasure to present to Muslims residing in the West this invaluable book authored by His Eminence, Judge Sheikh Faysal Maulawi, may Allah bless his soul, a former vice-chairman of the European Council for Fatwa and Research. To produce this book Sheikh Faysal exerted great efforts worthy of appreciation. In full commitment to the hadith in which the Prophet Muhammad, peace be upon him, said: “Whoever is not grateful to people is indeed ungrateful to Allah”, we pray to Allah to reward Sheikh Faysal for this book and all his books, abundantly and continuously until the Last Day.....

This book is the result of deep knowledge and serious efforts and researching Islamic texts conducted by an expert blessed by sound understanding. This book came to meet Muslim needs at a time when voices of limited knowledge and no knowledge were raised appealing to Muslims to abide by citizenship the characteristics of which people were in total ignorance whereas others called unto Muslims to migrate to Muslim countries as they perceived it the safest way especially for Muslims who abide by Islam and Islamic morality. What can Muslims do who have been destined to be citizens in non-Muslim countries? What about Muslims, who travel to non-Muslim countries seeking job opportunities? What are their rights? What are their obligations? How to organize their lives? On what basis can they organize their lives?

His Eminence Sheikh Faysal Maulawi divided his books into four chapters. In the first chapter, he elaborates on the necessity of coexistence supporting his argument with Islamic proofs. This is followed by explanation of the concept of Wala' and Bara' (sincerity and disassociation). Sheikh Faysal concludes this chapter by explaining the foundations of coexistence. In

the second chapter Sheikh Faysal elaborates on the concept of citizenship and Dhimmah showing how Dhimmah and citizenship are parallel to each other. In the third chapter Sheikh Faysal elucidates on the rights and responsibilities of the Muslim citizens in Europe. Sheikh Faysal concludes his book by the fourth chapter in which he states the Islamic foundations of positive integration and the Islamic rules pertinent thereto.

These issues and others are addressed in this book by a scholar of Islam, who was fully versed of Muslims' context in the West.

May Allah show mercy to Sheikh Fasal Maulawi, reward him abundantly and gather us with him in the highest level in paradise in the company of the Prophets.

Author's introduction

Praise be to Allah and may Allah's peace, blessings and mercy be upon our Prophet Muhammad, his family and his Companions.

Europe, one of the world's five continents, is populated by approximately six hundred and fifty million people; out of whom more than thirty five million are Muslims (excluding Turks). They can be classified into three categories:

- 1- European Muslims:** They constitute the majority in Bosnia, Albania, Kosovo, Macedonia and Bulgaria, in addition to minorities i.e. Europeans embracing Islam, spread in various locations in Europe. For them, Europe is their original home.
- 2- Naturalized Muslim European Citizens and Muslim European Citizens by Birth:** Muslims, due to various reasons, migrated from Muslim countries to Europe where they permanently settled. Most immigrant Muslims acquired citizenships of respective European countries where they live deeming them their second home. Nevertheless, they still feel a longing for their first home. But their children are European and the European country wherein they have been born is their first home. They perceive their parents' country as their second home for which they long, yet they cannot imagine their return thereto especially in light of the current circumstances.
- 3- Muslim Immigrants:** Muslim immigrants, who have not acquired European citizenship, whose residence in Europe is deemed to be either permanent or temporary, consider Europe as a land of immigration and hold fast to their origins. I believe this category is made up of a small number of Muslims constituting one tenth of Muslim immigrants.

By and large they will be excluded from this study since they are not European citizens.

Muslim citizens, belonging to the first and second category, are estimated to be more than 35 million. I will endeavour to answer their questions in this study divided into the following chapters:

Chapter One: Co-existence of Muslims and non-Muslims.

Chapter Two: Citizenship and Dhimmah, Historical Development.

Chapter Three: Muslims' Citizenship in Europe (responsibilities and rights).

Chapter Four: Integration in European society.

First Chapter
Coexistence of Muslims and non-Muslims

The Necessity of Coexistence:

Allah created man in the best stature¹ from a product of wet earth². Then Allah taught him utterance³ commencing with names⁴ followed by what man knew not⁵. On this basis, human beings, as a race, have been honoured. Allah said: *“Verily we have honoured the children of Adam. We carry them on the land and the sea, and have made provision of good things for them, and have preferred them above many of those whom We created with a marked preferment.”* (Trans. 17:70)

When Allah created man He let him dwell in paradise. Allah said: *“And We said: O Adam! Dwell thou and thy wife in the Garden.”* (Trans. 02:35) In confirmation of this honour to mankind, Allah commanded the angels to bow down before Adam. Allah said: *“And when We said unto the angels: Prostrate yourselves before Adam, they fell prostrate, all save Satan. He demurred through pride, and so became a disbeliever.”*(Trans. 02:34) Allah highlighted the enmity Satan declared against Adam and said: *“Therefore we said: O Adam! This is an enemy unto thee and unto thy wife, so let him not drive you both out of the Garden so that thou come to toil.”* (Trans. 20:117) Nevertheless, Adam and Eve listened to Satan’s insinuations and ate from the forbidden tree. Hence, the divine command was issued. Allah said: *“He said: Go down hence, both of you, one of you a foe unto the other. But if there come unto you from Me a guidance, then whoso followeth My guidance, he will not go astray nor come to grief.”* (Trans. 20:123)

Thus earth has become a land of tests for man whereon he is deemed Allah’s viceregent. Allah said: *“And when thy Lord said unto the angels:*

1 Quran 95:04
2 Quran 12:23
3 Quran 55:03
4 Quran 02:31
5 Quran 96:05

Lo! I am about to place a viceroy in the earth.” (Trans. 02:30) In order to enable man to succeed in his viceregency, Allah subjected all creatures for him. Allah said: *“See ye not how Allah hath made serviceable unto you whatsoever is in the skies and whatsoever is in the earth.”* (Trans. 30:20) Moreover, Allah blessed man with the mind and ability to make the choices.

This viceregency evolves around two foci:

The First Mission: Allah created mankind to accomplish certain mission. Allah said: *“I created the jinn and humankind only that they might worship Me.”* (Trans. 51:56) It is the divine command. Allah said: *“O Children of Adam! Let not Satan seduce you as he caused your (first) parents to go forth from the Garden.”* (Trans. 07:27) *“O Children of Adam! When messengers of your own come unto you who narrate unto you My revelations, then whosoever refraineth from evil and amendeth - there shall no fear come upon them neither shall they grieve. But they who deny Our revelations and scorn them - such are rightful owners of the Fire; they will abide therein.”* (Trans. 07:35-36)

People should believe in all Prophets and follow them. Allah said: *“Mankind was one community, and Allah sent (unto them) Prophets as bearers of good tidings and as warners, and revealed therewith the Scripture with the truth that it might judge between mankind concerning that wherein they differed.”* (Trans. 02:213)

The divine messages reached culmination by what has been revealed to the Prophet Muhammad. The divine initiative reached its culmination thereby. Allah said: *“And those who believe and do good works and believe in that which is revealed unto Muhammad - and it is the truth from their Lord - He riddeth them of their ill-deeds and improveth their state.”* (Trans. 47:02) Belief in such a divine message is utterly dependent on man’s choice. Allah

said: *“Say: (It is) the truth from the Lord of you (all). Then whosoever will, let him believe, and whosoever will, let him disbelieve.”* (Trans. 18:29) It is by Allah’s will that there be belief and disbelief until the Day of Resurrection. It is also by Allah’s will that whoever does right it will be good for him/her and whoever does otherwise he/she incurs repercussions against himself/herself⁶. Hence, the obligation of following the example of the Prophets, in terms of inviting people to worship Allah, remains incumbent upon believers until the Day of Resurrection. Allah said: *“And there may spring from you a nation who invite to goodness, and enjoin right conduct and forbid indecency. Such are they who are successful.”* (Trans. 03:104) Also Allah said: *“And who is better in speech than him who prayeth unto his Lord and doeth right, and saith: Lo! I am of those who surrender (unto Him).”* (Trans. 41:33)

Not only does the perpetual obligation of Da’wah require coexistence of all people but rather its continuity in all circumstances deeming it a normal phenomenon based on man’s innate characteristics. If that is not the case, then what is the Prophets’ mission? What is the mission of their followers, if they do not coexist with all people, apart from their race and faith, so that they might make Da’wah and have dialogues with them?

The Second Mission: From the time of his descending to the earth Allah has commissioned Adam to accomplish prosperity therein. Allah said: *“And unto (the tribe of) Thamud (We sent) their brother Salih. He said: O my people! Serve Allah, Ye have no other God save Him. He brought you forth from the earth and hath made you husband it. So ask forgiveness of Him and turn unto Him repentant. Lo! my Lord is Nigh, Responsive.”* (Trans. 11:61)

Allah has assigned this mission to man apart from his faith. Mankind has been distinguished since it is the only species blessed with the ability to

6 Quran 45:15

reason. The whole universe has been subjected to mankind. Applying his mental faculties, man managed to discover many secrets of the universe and avail therefrom. These discoveries have been shared by various societies. Hence, man has been accumulating knowledge interpreted in today's civilization the outcomes thereof no man had thought of.

Prosperity of the earth is a reciprocal mission, which should be shouldered by all people; Muslims and non-Muslims. Since they live in one world enjoying the same facilities thereof, their coexistence and mutual relations have been made their destiny so that they can fulfil their mission.

Islamic Proofs of the Legality of Coexistence:

It is permissible for Muslims to live on any part of the earth coexisting with all peoples governed by any type of regime, provided he/she is entitled to freedom of belief and religious practices and enjoys his/her rights as a human being and a citizen. The following attests to this verdict:

1- Da'wah Obligation is Dependent on Coexistence:

In the Qur'an Allah addresses man in more than seventy verses and addresses people in more than two hundred verses confirming the universality of Muhammad's message. Hence, Islam should reach all people. This cannot be achieved except through coexistence of Muslims and non-Muslims based on respect where Muslims convey the Islamic message by word and action.

2- Muslim Companions Coexisted with Their Non-Muslim People:

The Prophet Muhammad's biography confirms the legality of Muslims' coexistence with non-Muslims. When Dimad Al-'Usdi came to Mecca and listened to the Prophet Muhammad, peace be upon him, he gave him the pledge. Dimad embraced Islam. Afterwards he returned to his people and lived with them until the Prophet Muhammad, peace be upon him, migrated to Medina. The Prophet, peace be upon him, sent an expedition and they passed by his people. The leader of the detachment

said to his troops: Have you found anything with these people? One of them said: "I found a utensil for water." The commander said: "Return it for they are the people of Dimad."⁷

When 'Amr Ibn Absa As-Sulami embraced Islam in Mecca, he said to the Prophet Muhammad, peace be upon him,: "I will follow you." The Prophet Muhammad, peace be upon him, said: "Nowadays you cannot do it. Do not you see the people's situation and mine? Go back to your people. When you hear of my victory, then come to me."⁸

At-Tufail Ibn 'Amr Ad-Dausi embraced Islam in Mecca. He returned to his people and invited them to Islam. Only few of them embraced Islam, so he filed a complaint to the Prophet Muhammad, peace be upon him and asked him to make prayers for his people. The Prophet, peace be upon him, said: "O Allah! Guide Daus and let them come to me."⁹ Al-Tufail returned to his people and invited them to Islam. He remained with them. During that time the Prophet, peace be upon him, migrated and the battles of Badr, 'Uhud and the Trench occurred. Afterwards Al-Tufail left, in the company of seventy or eighty families including Abu Huraira, for Medina the Prophet, peace be upon him at the time of Khaibar.¹⁰

Abu Thar Al-Ghifari embraced Islam in Mecca. The Prophet, peace be upon him, said to him: "Go back to your people, inform them of Islam and stay therewith until my news reach you."¹¹

Despite the fact that there were no longer any reasons for Hijra, Muslims remained in Abyssinia:

As a result of the severe persecution they suffered in Mecca, the early

7 Sahih Muslim, Kitab Al-Jum'ah, Bab Takhfif As-Salah Wal-kutbah

8 Sahih Muslim, Kitab Salat-ul-Musafereen No. 832

9 Al-Bukhari, Kitab Al-Jihad Was-Sira, Bab Ad-Du'a' Lilmushrikeen Belhuda Liyataal-lafahum

10 As-Sira Al-Halabiya, Beirut, Dar Al-Kutub Al-'Ilmiya, v1, p513

11 Ali As-Sallabi, As-Sira An-Nabawiya from Sahih Al-Bukhari No. 2473

Muslim companions migrated to Abyssinia. Afterwards the Islamic state was established in Medina. Hence, the Muslim migrants to Abyssinia could have migrated thereto to live with their Muslim brethren, but they did not. They preferred to remain coexisting with non-Muslims in Abyssinia where they lived for seven years after the establishment of the Muslim state in Medina. They only migrated to Medina at the time of Khaibar. The Prophet Muhammad, peace be upon him, said: “I do not know which I rejoice; the conquest of Khaibar or the coming of Ja’far.”¹² None of the Prophet Muhammad’s biographical books states that the Prophet, peace be upon him, did, under the guise of illegitimacy of coexistence with non-Muslims or Taktheer Sawad Al-Muslimeen (increasing the numbers of Muslims), command them to migrate to Medina. Had that been the case, then it should have occurred when the Prophet Muhammad, peace be upon him, arrived in Medina. Only after the Al-Hudaibiya treaty the Prophet Muhammad, peace be upon him, commissioned ‘Amr Ibn ‘Umayya Ad-Dumairi to the Negus. On the basis of a permission granted by the Negus, ‘Amr Ibn ‘Umayya Ad-Dumairi accompanied Muslims from Abyssinia to Medina on two ships. This confirms the legitimacy of Muslim coexistence with non-Muslims.

Muslim coexistence with non-Muslims in a non-Muslim land is equal in excellence to living in a Muslim land. When visiting his daughter Hafsa, the Prophet’s wife, ‘Umar Ibn Al-Khattab asked: “Who is this lady.”

Hafsa replied: “Asma’ Bint ‘Umais.”

‘Umar said: “Is she the Abyssinian? Is she the one who came on the boat?”

Asma’ said: “Yes.”

‘Umar said: “We migrated before you, so we are more akin to the Messenger than you.”

12 Al-Hakim, Musnad, v3, p211. Al-Hakim classified this hadith as authentic. At-Tabarani, Al-Mu’jam Al-Kabeer, v2, p107. Abu Dauud, Sunan Abu Dauud, v5, p. 392. Ath-Thahabi classified this hadith as Mursal but Al-Albani classified it as Hassan (Al-Ghazali, Takhri’j Ahadeeth Fiqh As-Sira).

Asma’ was upset and said: “Nay, by Allah. You were with the Messenger of Allah and he fed the hungry ones among you and educated the unlearned ones from you. As for us, we were in the land of the distant and the unwanted! That was for the sake of Allah and His Messenger. By Allah I will refrain from food and water until I mention what you said to Allah’s Messenger. We were hurt and deterred.”

Asma reported the event to the Prophet, peace be upon him and the Prophet said: “He is not more akin to me than you for he and his companions migrated once. As for you people of the ship, you have migrated twice.”¹³

Migration currently is not an obligation:

Muslim jurists have expressed a wide range of Fatwas regarding migration from non-Islamic lands to Muslim lands. Some described it as an obligation, others said it is recommended and others stated that it is forbidden. These different Fatwas are due to the fact that each of these scholars issued his Fatwa on the basis of his context. Today we are considering the current situation where a Muslim can live in any land while being able to practise his religion. Hence, we do not originally classify Hijra as an obligation but rather a permissible action that can turn into a recommended, obligatory, disliked or forbidden one in full conformity with the respective circumstances of every Muslim.

‘Amr Ibn Al-‘Aas narrated: “A bold tough man came and said: ‘O Messenger of Allah! Where should we migrate? Should we migrate to you wherever you might be or should we migrate to a specific land or certain people? Is migration over by your demise?’

‘Amr Ibn Al-‘Aas said: “The Prophet remained silent for some time. Afterwards he said: ‘Where is the man inquiring about migration?’

The man replied: “Here I am, O Messenger of Allah!”

13 Al-Bukhari, Sahih Al-Bukhari, Kitab Al-Maghazi, Bab Ghazwat Khaibar.

The Prophet, peace be upon him, said: “If you perform the five daily prayers and pay Zakat, then you are a migrant even if you die in Hadramout” (A place in Yamama).¹⁴

‘Aisha is reported to have said: “There is no Hijra today. In the past a believer had to flee with his religion to the messenger of Allah, fearing seduction and persecution away from his religion. But now Allah has made Islam manifest and a believer may worship his Lord wherever he might be.”¹⁵ In his explanation to this hadith, Ibn Hajar highlighted that ‘Aisha points to the legitimacy of Hijra and that it is due to being unable to preserve their religious identity. The rule is utterly dependent on its cause. In other words, there is a consensus that Hijra is not an obligation for whoever can practice his religion.¹⁶

Imam Malik was asked: “Which is better; living in the enemy’s land or going and coming therefrom.” Imam Malik said: “Living there is an abundant good.”¹⁷

Imam Nawawi stated: “Returning home is forbidden for migrants except for a necessity or the reversion of his home into a land of security, faith and Islam.”¹⁸

On the basis of the above-mentioned, although others argue to the contrary, we do not perceive migration of Muslims residing in Europe to the land of Islam as an obligation. As for European Muslims, constituting the majority of the Muslims living in Europe, it is forbidden. Returning to the home land for a Muslim migrant can be an obligation, a recommendation, disliked action or a prohibition according to their respective circumstances.

14 Ahmad, the Musnad of Ahmad

15 Al-Nisa’i, Al-Sunan Al-Kubra, Kitab Al-Bay’ah, Bab Thikr Al-Ikhtilaf fe Inqita’ Al-Hijra, p427

16 Ibn Hajar, Fath Al-Bari Sharh Sahih Al-Bukhari, v7, p229

17 Al-Bayan Wattaseel, v2, p583

18 Al-Muqaddimat Al-Mumahhidat, v2, p135

Coexistence in Muslim Society:

By virtue of the Dhimmah treaty¹⁹ non-Muslims, both indigenous citizens and migrants, who left their home for certain reasons, can live in a Muslim society and enjoy personal freedom, human rights and an equal status to Muslims. According to the majority of Hanafi, Shafi’i and Hanbali jurists, the maximum period of residence for the non-Muslim granted permission to enter a Muslim land is one year. If he remains in the Muslim land for more than one year, counting from his date of entry or the date of warning of departure issued by the Muslim ruler therein, he acquires citizenship of this Muslim land and acquires the status of a Dhimi.²⁰ Some other scholars stated that he should be given the option to be a Dhimi or to leave the Muslim land. This attests to the Islamic eagerness for diversity and coexistence within Muslim society. Islam aims at constituting an open human inclusive society.

Coexistence in Non-Muslim Society:

Despite that some jurists perceive migration from Dar-ul-Harb (land of war) as an Islamic obligation; the Muslim can live in a non-Muslim society even if it happens to be Dar-ul-Harb provided Izhr-ud-Deen (practising Islam freely) is available. These jurists stipulate the inability of Izhar-ud-Deen for the obligation of migration.²¹ Due to the international conventions guaranteeing human freedom and the constitutions of all countries, it is self-evident that this is not the reality in all non-Muslim countries. At this point it should be marked clearly that the Hanafi School²² in no circumstances view migration as an obligation in conformity with

19 Permanent security treaty granted to non-Muslims living in a Muslim land

20 The Kuwaiti Fiqh encyclopaedia, Bab Ahl-udh-Dhima, from Al-Bada’i, v7, p111, and Al-Marudi, Al-Ahkam As-Sultaniya, p146, and Abi Ya’li, Al-Ahkam As-Sultaniya, p145,

21 The Kuwaiti Fiqh encyclopaedia, Bab Dar-ul-Harb from Nihaiatulmuhtaj, v8, p82, Kash-shaf Al-Qina’, v3, p43, Asni Al-Matalib, v4, p204, Al-Mughni, v8, p456, ‘Umdit Al-Qari’, v1, p35 and Al-Insaf, v4, p121

22 Al-Sarkhasi, Al-Mabsut

the hadith in which the Prophet Muhammad, peace be upon him, said: “There is no Hijra (migration) after the conquest of Mecca but rather Jihad and intention.”²³ This confirms that the majority of the Muslim schools of Fiqh and Muslim jurists perceive coexistence with non-Muslims even if it be under a non-Muslim rule as legitimate.

The Concept of Wala’ and Bara’ (Fidelity and Disassociation) and its Impact on the Legality of Coexistence:

Among intellectual topics the issue of Wala’ and Bara’ enjoys paramount importance at various levels of the Islamic awakening groups. Some categorically perceive it as part of the Islamic creed, so those who do not stick to the rule are classified as non-Muslims; whereas others describe it as a practical issue of Fiqh. Since the concept of Wala’ and Bara’ has a profound impact on the issue of Muslim non-Muslim coexistence in Muslim and non-Muslim societies and since it has been subject to various interpretations not based on Islamic rules, I think it is essential to explain it. In brief I state:

Self-evident for Muslims is that the articles of Muslim faith are six; belief in Allah, belief in all Prophets and Muhammad as the last Prophet, belief in the revealed books and the Qur’an as the last book thereof, belief in the angels, belief in the Last Day and belief in destiny; the easy and the difficult destiny. The term Wala’ and Bara’ has not been applied in the Qur’an or the Sunnah when defining the Muslim creed or specifying its articles. When elaborating on the concept of Wala’ and Bara’, scholars stress that sometimes it is related to the creed and other times to deeds. Hence, if we perceive the concept of Wala’ and Bara’ as a creedal issue then we have to understand it in light of the articles of Muslim faith so that it will be harmonious with them. If we endeavour to do it in the opposite way it will lead to misconceptions.

23 Al-Bukhari, Kitab Al-Jihad Was-Siyar, the obligation of war and the obligatory Jihad and intention.

1- Al-Bara’ and Al-Bara’a (Disassociation and Innocence)

Al-Bara’a refers to two meanings in Islamic texts:

First creedal meaning: In this context it refers to disassociation of polytheism and disbelief. Allah said: “Say: He is only One Allah. Lo! I disassociate myself of that which ye associate (with Him).” “Lo! I am innocent of what ye worship” (43:26). In light of the aforementioned verse, disassociation of disbelief is an expression of true faith. Hence, Allah said: “Say: O People of the Scripture! Come to an agreement between us and you: that we shall worship none but Allah, and that we shall ascribe no partner unto Him, and that none of us shall take others for lords beside Allah. And if they turn away, then say: Bear witness that we are they who have surrendered (unto Him)” (03:64).

It is an incumbent duty upon Muslims to express their disassociation of disbelief or express their adherence to Islam and this indicates their disassociation of disbelief. A saying that can be used in one situation is not necessarily suitable for another. In the above-mentioned verse Allah chose the expression of adherence to Islam rather than disassociation of disbelief since the context is included in the scope of dialogue with the People of the Book and this requires selecting gentle words and shunning provocation. This meaning is reiterated in the Qur’an. Allah said: “and reason with them in the better way” (16:125).

Second deeds: In this context it refers to the following:

- I. Individual accountability. Allah said: “And if they deny thee, say: Unto me my work, and unto you your work. Ye are innocent of what I do, and I am innocent of what ye do.” (10:41) In other words, you take no responsibility for my deeds and I take no responsibility for yours either.
- II. Terminating an effective treaty: Allah said: “Bara’a “Freedom from obligation” (is proclaimed) from Allah and His messenger

toward those of the idolaters with whom ye made a treaty.” As Bara’a here indicates cancelling a treaty Muslims entered into with the idol worshippers. Hence, it is pertinent to rules of Fiqh and is not related to the creed.

- III. No support: The Prophet Muhammad, peace be upon him, said: “I am Bari’ (I disassociate myself) of every Muslim coexisting with polytheists.”²⁴ In other words, the Prophet, peace be upon him, and Muslims take no responsibilities for Muslims coexisting with polytheists if they are hurt during a war between Muslims and the polytheists with whom they live. Such coexistence is wrong and those who do it should take responsibilities therefore. Nevertheless, this Bara’a (disassociation) is related to deeds and is not pertinent to the creed. The Prophet, peace be upon him, called the Muslims coexisting with polytheists Muslims. This means he did not deny their being Muslims

2- Al-Wala’ and Al-Muwalah (Fidelity and Confidence)

Both of Al-Wala’ and Al-Muwalah linguistically refer to love, support and following. Qura’n applies them in these three connotations.

A Muslim is supposed to harbour these three meanings for his Muslim brethren and sisters. Allah said: “*And the believers, men and women, are protecting friends one of another; they enjoin the right and forbid the wrong and they establish worship and they pay the poor-due, and they obey Allah and His messenger. As for these, Allah will have mercy on them. Lo! Allah is Mighty, Wise.*”(09:71) In general a Muslim is not supposed to have Wala’ and Muwalah for non-Muslims. Allah said: “*O ye who believe! Choose not disbelievers for (your) Awliya’ (supporters) in place of believers.*”(04:144) Nonetheless, Islamic texts

24 The Kuwaiti Fiqh encyclopaedia, Bab Dar-ul-Harb from Nihaiatulmuhtaj, v8, p82, Kash-shaf Al-Qina’, v3, p43, Asni Al-Matalib, v4, p204, Al-Mughni, v8, p456, ‘Umdit Al-Qari’, v1, p35 and Al-Insaf, v4,p121

classify certain types of Muwalah for non-Muslims as permissible. The following is the explanation:

First: The Infinite Muwalah: There are a number of Quranic verses classifying Muwalah to non-Muslims in general as forbidden. Allah said: “*O Ye who believe! Choose not for supporters such of those who received the Scripture before you, and of the disbelievers, as make a jest and a game of your religion.*”(05:57)

“*O ye who believe! Take not as supporters a folk with whom Allah is wrath.*”(60:13) “*O ye who believe! Take not the Jews and the Christians for supporters.*”(05:51)

These verses and the likes thereof explicitly indicate that all types of Muwalah between Muslims and non-Muslims, regardless of their faiths, are impermissible.

Second: The Limited Muwalah: There are a number of Quranic verses that stipulate two conditions to prohibit Muwalah between Muslims and non-Muslims:

- a) That non-Muslims are at war against Muslims.

Allah said: “*Allah forbiddeth you only regarding those who warred against you on account of religion and have driven you out from your homes and helped to drive you out, that ye make friends of them. Whosoever maketh friends of them - (All) such are wrong-doers.*”(60:09)

“*O ye who believe! Choose not My enemy and your enemy for friends. Do ye give them friendship when they disbelieve in that truth which hath come unto you, driving out the messenger and you because ye believe in Allah, your Lord? If ye have come forth to strive in My way and seeking My good pleasure, (show them not friendship). Do ye show friendship unto them in secret,*

when I am best aware of what ye hide and what ye proclaim? And whosoever doeth it among you, he verily hath strayed from the right way.”(60:01)

In the above-mentioned two verses Muwalah refers to support directed not to non-Muslims who have entered into a treaty with Muslims nor those who maintain peaceful relations with Muslims but rather the non-Muslims at war against Muslims.

b) That the Muwalah for non-Muslims is directed against Muslims and not merely to support non-Muslims. Allah said: *“Let not the believers support disbelievers in preference to believers.”(03:28)*

This verse prevents Muslims’ support to non-Muslims against Muslims and not just supporting non-Muslims, as supporting non-Muslims with regard to what is permissible is legitimate in Islam and could be recommended and even categorized as a requirement if it is included in the scope of softening the hearts, which is one of the expenses of Zakah.

Third: The Forbidden Muwalah: Some Muslim scholars categorize Muwalah for non-Muslims in general as forbidden. Nevertheless, the majority of Muslim scholars classify it as forbidden only if the above stipulated two conditions are fulfilled. We adopt the the majority’s opinion for the following proofs:

1- It has been agreed that certain types of Muwalah for non-Muslims who are not fighting against Muslims are legitimate. The Muslim husband’s love for his non-Muslim spouse is legitimate.

Allah said: *“And of His signs is this: He created for you spouses from yourselves that ye might find rest in them, and He ordained between you love and mercy. Lo! herein indeed are portents for folk who reflect.”(30:21).*

Some Muslim Companions liked some Jews and they were allowed

to do this. Allah said: *“Lo! ye are those who love them though they love you not, and ye believe in all Scripture. When they fall in with you they say: We believe; but when they go apart they bite their finger-tips at you, for rage.”(03:19)*

In his exegesis, Muhammad Rasheed Rida commented on this verse saying: *“The love some Companions had for Jews who betrayed them and the fact that the Qur’an approved thereof highlights the Islamic profound impact on the hearts of Muslims and attests to the fact that Islam is a religion of love, mercy and tolerance.”²⁵*

The Prophet Muhammad, peace be upon him, was eager to guide Abu Talib to Islam. In this context Allah revealed: *“Lo! thou (O Muhammad) guidest not whom thou lovest, but Allah guideth whom He will.”(25:56)* The Prophet Muhammad, peace be upon him, loved his uncle Abu Talib and wished to guide him to Islam. Islam manifestly stresses the legitimacy of a Muslim’s love for his father, children, siblings, wife and extended family members even though they are not Muslims. In addition, Islam highlights the legitimacy of a Muslim’s love for financial gain and to the land in which he/she lives. Nonetheless, Islam stresses that a Muslim’s love for Allah and His messenger should be greater than all other types of love.

Allah said: *“Say: If your fathers, and your sons, and your brethren, and your wives, and your tribe, and the wealth ye have acquired, and merchandise for which ye fear that there will be no sale, and dwellings ye desire are dearer to you than Allah and His messenger and striving in His way: then wait till Allah bringeth His command to pass. Allah guideth not wrongdoing folk.”(09:24)*

This verse proves the legitimacy of certain types of love between Muslims and non-Muslims. The Muwalah includes love in its linguistic and Islamic definitions. This confirms that Muwalah for

non-Muslim is only forbidden if it meets the above-mentioned two conditions.

- 2- Not only is Muslim support to non-Muslim permissible, but rather it is an Islamic requirement if it involves enjoining justice and restoring rights especially when it concerns a non-Muslim who has entered into a security treaty with Muslims e.g. Dhimi, citizens of countries that have entered into treaties with Muslims, etc. This is supported by the hadith in which the Prophet Muhammad, peace be upon him, said: "Help your brother whether he is wrong or wronged."

The Companions asked: "We know how to help him if he is transgressed upon, but how to help him if he oppresses others?"

The Prophet, peace be upon him, said: "By stopping his oppression."²⁶

This means that a Muslim should support a non-Muslim if another Muslim is wrong. The books of the Prophet's biography state that the Prophet, peace be upon him, entered into treaties with non-Muslims so that they would support one another. The Prophet Muhammad, peace be upon him, entered into a treaty with Jews residing in Medina: He said: "Those Jews who follow the Believers will be helped and will be treated with equality. (Social, legal and economic equality is promised to all loyal citizens of the State)." "The parties to this Pact are bound to help each other in the event of an attack on Yathrib."²⁷ The Prophet, peace be upon him, also entered into a treaty with the tribe of Khuza'ah. According to this treaty both parties supported each other, yet the Khuza'ah worshipped idols. The conquest of Mecca was the result of this

26 Al-Bukhari, Kitab Al-Madhalim, Bab A'in Akhaka Dhaliman Au Madhluman. Tirmidhi, Kitab Al-Fitan

27 Muhammad Hameed Allah, Majmu'at Al-Watha'iq Al-Sitasiya, Muassasit Al-Risalah, Beirut

treaty as the tribe of Bakr, the allies of The Quraish, raided the Khuza'ah who were the allies of Muslims.²⁸

In his exegesis, Muhammad Rashid Rida stated: "Muwalah, allying and support may occur among members of various faiths for the sake of worldly interests. Hence, it is permissible for Muslims to practise Muwalah with non-Muslims against non-Muslims because of mutual interest. This type of Muwalah is not included in the scope of forbidden Muwalah since it does not meet the stipulated question i.e. it should be directed against Muslims."²⁹

- 3- Allah said: "*Allah forbiddeth you not regarding those who warred not against you on account of religion and drove you not out from your homes, that ye should show them kindness and deal justly with them. Lo! Allah loveth the just dealers.*" (60:08)

This verse explicitly limits the prohibition of Muwalah to the Muwalah of the disbelievers fighting against Muslims. This is the last verse revealed in this regard, so it either explains all previously revealed verses pertaining to Muwalah or abrogates them.

- 4- Self-evident is that general verses are subject to the limits specified in other verses provided the rule and the reason are the same. This is the issue we are discussing. All verses explain the same rule, i.e. the prohibition of Muwalah, and the same reason i.e. disbelief. So the general verses should be subject to the limits specified in other verses. On this basis, one can say the reasons for prohibition are disbelief, war and supporting non-Muslims against Muslims in wars.

28 Ibn Hisham, As-Sirah An-Nabawiya, v4, p139

29 Tafseer Al-Manar, v6,p430

The forbidden Muwalah could result in apostasy:

According to all Muslim scholars and schools of Fiqh, Muwalah for non-Muslims fighting against Muslims is deemed to be one of the major sins. Like other sins, if perpetrated and perceived as permissible, it leads to apostasy, whereas if committed because of fear, misinterpretation or any other reason or committed and perceived as a shortcoming, it would be a sin resulting in decreasing the faith, yet it does not lead to apostasy. This is the consensus reached by the majority of Muslim scholars when interpreting the two Quranic verses quoted by some scholars as a proof of apostasy of Muslims practising Muwalah for non-Muslims:

First verse: Allah said: *“O ye who believe! Take not the Jews and the Christians for allies. They are allies one to another. He among you who taketh them for allies is (one) of them.”*(05:51)

This verse explicitly expresses that Muslims practising Muwalah for Jews and Christians have committed apostasy. Nevertheless, according to most of the Quranic exegeses, this verse stresses that Muslims should refrain from dealing with non-Muslims fighting against Muslims.

Ibn Al-Jauzi explained it in two ways; first: whoever practises Muwalah for them in issues pertaining to religion is not a Muslim. Second: Whoever enters into treaties with them is equal to them in terms of disobedience.³⁰

Ibn Haiyan stated: “Whoever practises Muwalah for non-Muslim in terms of his behaviour but not his belief is part of them in terms of aversion. But whoever practises Muwalah for them in issues pertaining to belief is of them in terms of disbelief.”³¹

Ibn Al-Qasimi stated: “Muwalah, meaning nearness and love for Christians and Jews for the sake of disobedience, is deemed to be accepting disobedience. If it is practised for the sake of disbelief, it is deemed to

30 Ibn Al-Jauzi, *Zad Al-Maseer*, v2, p52

31 Ibn Haiyan, *Al-Bahr Al-Muheet*, v3, p507

be disbelief and if practised for the sake of lewdness, it is deemed to be lewdness. Muwalah meaning allaying and supporting if pertaining to an obligation or permissibility e.g. defending the Dhimis³², is an incumbent duty on Muslims. But if it is pertinent to a prohibition, e.g. allying with them to loot Muslims’ wealth and invade their land, it is a sin. If it involves revealing the Muslims’ secrets and wishing safety to non-Muslims for the sake of a favour they have done them or because of their being kinsfolk but not their disbelief, it is deemed to be a sin but not apostasy, since it has not been narrated that the Prophet Muhammad, peace be upon him, described Hatib Ibn Balta’ah as a disbeliever. In brief, Muwalah is deemed to be disbelief only if it involves accepting disbelief and it is deemed lewdness if it involves accepting lewdness.”³³

Second verse: Allah said: *“Let not the believers take disbelievers for their allies and supporters in preference to believers. Whoso doeth that hath no connection with Allah unless (it be) that ye but guard yourselves against them, taking (as if it were) security”.*(03:28)

This verse explicitly states that whoever practises Muwalah with the disbelievers has no connections with Allah. Hence, some perceive it as apostasy. During the lifetime of the Prophet Muhammad, peace be upon him, Hatib Ibn Balta’ah sent a message to the idol worshippers of Mecca informing them of the Muslim army’s march towards Mecca. This was a type of forbidden Muwalah. This behaviour is explicitly apostasy. Hatib explained that he sent the message since he had no blood relations in the Quraish. So the people of the Quraish would owe him a favour and in return they would grant protection to his relatives residing in Mecca. Islamically this is not acceptable. Actually it is an example of forbidden Muwalah.

Hatib said: “Neither did I do it as an act of apostasy nor an acceptance of disbelief after Islam.”

32 Non-Muslims residing in the Muslim land

33 Al-Qasimi, *Mahasen At-Ta’weel*, v40, p80

The Prophet, peace be upon him, said: “He told you the truth.” The Prophet, peace be upon him, did not allow ‘Umar to kill Hatib. In this context the above-mentioned verse was revealed confirming the strict prohibition of Muwalah for disbelievers fighting against Muslims. By virtue of this verse, this type of Muwalah is a major sin, but not an act of apostasy. This verse confirms the Prophet’s attitude towards Hatib.³⁴ This means whoever is involved in this forbidden Muwalah on the basis of interpretation or misinterpretation is not deemed to be renouncing Islam. This is the methodology adopted by scholars authenticating the issue of the Islam of certain Muslims assuming a given attitude on the basis of an interpretation. This opinion was adopted by the majority of the Prophet’s Companions and scholars as they perceived the Kharijites as Muslims, in spite of the fact that the Kharijites described Muslims as non-Muslims and shed Muslim blood. What the Kharijites committed was more serious than supporting non-Muslims who kill Muslims, since this support might not result in actual killing. Imam At-Tabari, the greatest interpreter of the Qur’an, stated that fear of non-Muslim justifies Muwalah for them provided it is practised within the limits of their safety.³⁵ Muhammad Rashid Rida stated: “If Muwalah for non-Muslims is permissible for the sake of protection from their harm, then this permissibility is confirmed if Muslims attain advantages thereof.”³⁶

Wala’ and Bara’ and the Legality of Coexistence:

On the basis of the above-mentioned deliberation, it is clear that the authentic conception of Wala’ and Bara’ does not contradict coexistence since it is a reality that not only does Islamic legislation not prohibit but rather encourages in certain situations. The authentic conception of Wala’ for Islam and Muslims and Bara’ from disbelief and disbelievers is an

34 Al-Bukhari, Kitab Al-Jihad, Bab Al-Jasus

35 Imam At-Tabari, Tafseer At-Tabari, Dar Al-Ma’rifah, Beirut, v3, p152

36 Tafseer Al-Manar, Dar Al-Ma’rifah, Beirut, v3, p280

Islamic requirement only in the case of war against non-Muslims but not in the case of coexistence based on treaties.

Islamic Legal Rules of Coexistence:

Coexistence between Muslims and non-Muslims is organized by a number of Islamic legal rules by which a Muslim should abide, whether this coexistence occurs in Muslim societies ruled by Shari’ah law or in non-Muslim societies as in Europe and the West in general.

The corner stone of these rules is Quranic verse No. 8 Chapter 60: “Allah forbiddeth you not regarding those who warred not against you on account of religion and drove you not out from your homes, that ye should show them kindness and deal justly with them. Lo! Allah loveth the just dealers.”

These rules can be summed up as follows:

1- Recognizing Others and Dealing with them:

This is the most important principle of democracy. But for Muslims, it is a comprehensive Islamic principle encompassing all types of differences. Allah grants human beings the right to choose between belief and disbelief, yet He does not deprive disbelievers from graces He grants to believers. Nevertheless, Allah exhorts human beings to believe in Him stressing that belief is the strongest hold.

Allah said: “*There is no compulsion in religion. The right direction is henceforth distinct from error. And he who rejecteth false deities and believeth in Allah hath grasped a firm handhold which will never break. Allah is Hearer, Knower.*” (Trans. 02:256)

Such comprehensive right of choice granted to all human beings requires acceptance of the results therefrom and dealing therewith in full conformity with Islamic legal rules. Had it been different to this, freedom of choice would have been meaningless.

2- Morality:

In Islam, morals are infinite values on the basis of which human beings should treat one another apart from all differences and in particular faith differences. Not only should a Muslim deal with his dear people, his family and extended family members, his countrymen and Muslims on the basis of a high level of morality but also all other people.

The Prophet Muhammad, peace be upon him, treated the idol worshippers of Mecca with high morality. Likewise, he dealt with the Jews in Medina. The best attribute of his was praised by Allah saying: *“And verily, you (Muhammad) are on an exalted standard of character.”* (Trans. 86:04) Coexistence is only viable if founded on morals that mostly emerge from religions and divine revelations.

3- Justice:

Justice is the most significant human value for which Allah sent down revelations to the Prophets.

Allah said: *“Indeed We have sent Our Messengers with clear proofs, and revealed with them the Scripture and the Balance (justice) that mankind may keep up justice. And We brought forth iron wherein is mighty power (in matters of war), as well as many benefits for mankind, that Allah may test who it is that will help Him (His religion), and His Messengers in the unseen. Verily, Allah is All-Powerful, All-Mighty.”* (Trans. 57:25)

The Scripture is the source of equality and the Balance is the means thereto since it sets equilibrium between rights and responsibilities. The current authorities should endeavour to achieve equality through their laws. Equality is an Islamic value incumbent upon Muslims when dealing with friends and enemies alike. Muslims should observe it even with enemies in a state of war.

Allah said: *“O you who believe! Stand out firmly for Allah as just witnesses; and let not the enmity and hatred of others make you avoid justice. Be just: that is nearer to piety; and fear Allah. Verily, Allah is Well-Acquainted with what you do.”* (Trans. 05:08)

4- Cooperation:

Coexistence is meaningless if people do not collaborate to achieve goals of common interest. Allah stresses that cooperation even with polytheists is an Islamic requirement.

Allah said: *“let not the hatred of some people in (once) stopping you from Al-Masjid-al-Harâm (at Makkah) lead you to transgression (and hostility on your part). Help you one another in Al-Birr and At-Taqwa (virtue, righteousness and piety); but do not help one another in sin and transgression. And fear Allah. Verily, Allah is Severe in punishment.”* (Trans. 05:04)

The idol worshippers of Mecca denied Muslims the right of entry to the Holy Mosque. Consequently hatred for idol worshippers ploughed its way into Muslim hearts. Nevertheless, they were not allowed to transgress. Had they found any alternative they would have cooperated with these idol worshippers provided it would have involved enjoining justice and forbidding evil. Such cooperation would not only have been permissible but rather an Islamic requirement.

The Prophet Muhammad, peace be upon him, set the example of members of one society as passengers on a ship. “A number of passengers were on the upper deck while others were on the lower deck. To get water those on the lower deck had to pass by the passengers on the upper deck. Hence, they suggested making a hole in their portion (lower deck) so that they could get water without

disturbing the passengers of the upper deck. If the passengers on the upper deck allowed them to implement this suggestion they all would be destroyed, whereas if they did not allow them they and all passengers would be saved.”³⁷

All members of society are partners and citizens. An action conducted by some members may impact on the entire society. Hence, dialogue and cooperation are essential. Mischief affects all members and all members benefit from progress.

The Prophet Muhammad, peace be upon him, witnessed the Al-Fudul treaty attended by the leaders of the Quraish who agreed to support the weak, relieve the distressed, help the needy, show generosity to guests etc. The Al-Fudul treaty was held prior to Muhammad’s Prophethood. The Prophet Muhammad, peace be upon him, commented on this treaty after becoming a Prophet saying: “I have witnessed a treaty held in Abdullah Ibn Jad’an’s house. For me, it is dearer than the entire world. If I am invited thereto after becoming a Prophet I will attend it.”³⁸ This treaty is a non-refutable proof for the permissibility of Muslim non-Muslim cooperation to accomplish a permissible matter.

37 Sahih Al-Bukhari, Kitab Al-Sharikah, Bab Hal Yuqra’ Fe Al-Qismah Walistiham Feeh

38 Sunn Al-Baihaqi Al-Kubra, Kitab Qism Al-Fi’ Walghanimah, Bab l’ta’ Al-Fi’ Ala Al-Diwan wa Man Yaqa’ Bihi Al-Bidaiah

Second Chapter Citizenship and Dhimmah Historical Development

Citizenship and Dhimmah³⁹- Historical Development

1- Definition and Explanation:

The term Watan linguistically refers to the land in which one lives.⁴⁰ Since man is attached to his Watan, the term is dear to him. People, regardless of their faiths and trends, sing for their Watan. In addition to other innately dear matters, Allah made reference to man's natural love for his Watan.

Allah said: *“Say: If your fathers, and your sons, and your brethren, and your wives, and your tribe, and the wealth ye have acquired, and merchandise for which ye fear that there will be no sale, and dwellings ye desire are dearer to you than Allah and His messenger and striving in His way: then wait till Allah bringeth His command to pass. Allah guideth not wrongdoing folk.”*(Trans. 09:24)

In this verse, Allah called Watan ‘Dwellings you desire’ and did not forbid loving them. Nevertheless, Allah commanded Muslims to love Allah and His messenger more than their Watan especially when they contradict one another. The Prophet Muhammad, peace be upon him, manifested his love for Mecca when he was compelled to leave. He, peace be upon him, said: “What a good city you are. How dear you are to me. Had your people not driven me to leave I would not have lived elsewhere.”⁴¹ “O Allah! Make Medina as dear to us as Mecca or even dearer.”⁴² The Prophet, peace be upon him, when hearing Usail describing Mecca, expressed his longing thereto saying: “O Usail! Leave the hearts at peace.”⁴³

Muwatanah signifies the action of belonging to *Watan*. It is the

39 Permanent security granted to non-Muslims living in the Muslim land

40 Ar-Razi, Mukhtar As-Sihah, Dar-ul-Qalam, Beirut

41 Tirmidhi, Kitab Al-Manaqib An Rasul-ul-Iah, Bab Fe Fadli Makkah, Hassan Gharib

42 Sahih Al-Bukhari, Abwab Fadail Al-Medina

43 Ibn Hajar, Al-Isabah, Usail's biography, v1, p53

interaction between people and place resulting in love for the *Watan* and leading to reciprocal rights and responsibilities between human beings and the *Watan* wherein they reside. According to Ibn Khaldun, people commonly residing in a place by nature have multiple links. They essentially set up authorities to run their affairs and lead them against others. People usually submit themselves to these authorities. *Muwatanah* is no longer a mere belonging to a place. It also involves belonging to the people sharing the place and the regime ruling their relations and affairs. *Muwatanah* also constitutes a certain type of support for authority. It actually organizes a set of integrated rights and responsibilities between the citizen and the *Watan*. When responsibilities are not duly fulfilled then citizens will not be fully entitled to their rights and vice versa.

Not only does the Western concept of citizenship not include loving Watan but also it limits *Muwatanah* to “Relationship of rights and responsibilities between individual and state as specified by the law of the state.”⁴⁴ “Citizenship represents the most perfect form of membership in a political community.”⁴⁵ Hence, citizenship, according to the democratic systems, is a synonym of nationality. In other words, all matured citizens, males and females, enjoy all rights of citizenship.

2- Historical Development of Citizenship, from Discrimination to Equality:

Since their earliest eras, human beings have formed distinctive political entities each of which elected its political authority to run its affairs and lead it as a counterpart for other entities. People living within the jurisdiction of certain authority are deemed subjects thereto and

44 Al-Muwatanah Wd-Dimuqratiyah Fe Al-Bilad Al-Arabia, Arab Unity Research Centre, Beirut, P30 quoting the British Encyclopaedia.

45 Al-Muwatanah Wd-Dimuqratiyah Fe Al-Bilad Al-Arabia, Arab Unity Research Centre, Beirut, P30 quoting the British Encyclopaedia quoting the International Book Encyclopaedia

citizens therein, yet under the guise of citizenship discrimination was practised against certain classes. In addition to sexist practices, there was also discrimination between free people and slaves, ordinary people and nobles, lay people and educated people etc. On this basis, one can say that the history of citizenship is the history of man's struggle to accomplish equality, equity and justice. Efforts exerted to achieve equality included striving to attain participation in authority and decision making which constituted a congregational concern.

Throughout ancient history the struggle between rulers and subjects was in general due to respective interests and participation in decision making. Nevertheless, since the spread of Christianity and until the Middle Ages, as various Christian denominations emerged, a different type of struggle appeared namely that the rulers compelled their subjects to follow a particular religion or a given denomination. Consequently those who followed the religions of their rulers enjoyed all available rights of citizenship, whereas others were not entitled to the primary human rights i.e. free choice of religion. They were converted by force. The first Islamic Watan was established in Medina as declared by the Prophet Muhammad, peace be upon him, when he announced in 627 the Constitution of Medina (*صحيفة المدينة*), also known as the Charter of Medina constituting the first Islamic multicultural and multi-religious society in history made of Muslims, Jews, Christians and idol worshippers. It declared that Muslims constituted one nation made of Muhajirun⁴⁶ and Ansar⁴⁷. This Muslim nation was open. It included those who joined them and strove with them. From a creedal point of view, they all formed one nation.

At the same time the constitution of Medina declared the establishment

46 Early Muslims who migrated from Mecca to Medina

47 Early Muslims in Medina who supported the Prophet Muhammad

of a new political nation inclusive of Jews and idol worshippers residing in Medina. To this effect it instituted a number of rights and responsibilities for the Muslim, Jewish, and pagan communities of Medina bringing them within the fold of one community. All of them signed a treaty to set up a humane society wherein good and justice prevailed and all members thereof shunned all types of oppression and supporting and sheltering oppressors even though they might have been their children.

The Constitution established security for the entire community. According to this Constitution, defending Medina against any attack was an incumbent duty on all the members of this society. According to the Constitution if a serious argument occurred among signatories it would have been referred to Allah and His messenger to settle it. Thus all residents of Medina became citizens in the new Islamic state formed according to the Medina Constitution. The central leadership of this state was represented by the Prophet Muhammad, peace be upon him. There was also a non-central leadership represented by religious and tribal communities.⁴⁸

During the Middle Ages, the Christian religious state had power in Europe. The concept of citizenship, as a result of the religious and denominational fanaticism and the dictatorship practised by patriarchs and the religious men under the guise of Divine Right, deteriorated.

The church endeavoured to convert citizens to Christianity by force. In the period 1481-1491 the Court set up by Gregory XVI issued sentences to burn ten thousand, two hundred people and hang six thousand and eighty six people as a result of disagreement with the Church.

48 Muhammad Hameed Allah, *Al-Wathaiq Al-Madaniya fe Al-'Ahd An-Nabawi*, Beirut, Dar-ul-Irshad, p39

Then a religious revolution was started by Martin Luther (1483-1546). The struggle against the Church and the dictatorship of the kings and patriarchs was intensified especially after the great defeats of the Crusaders and the Church's failure in running worldly affairs. There emerged the theory of separating the Church from state.

The kings gradually terminated the concept of Divine Right that justified the authority of Popes and religious men. Popular movements arose to put an end to the dictatorship practised by kings particularly after the emergence of liberalism by Adam Smith (1732-1790), Thomas Malthus (1766-1834) and David Ricardo (1772-1823). The Liberal Philosophy confirmed the natural law in man's life in economic, social and political fields. It called for freedom and equality among all people.

Then emerged the social contract theory founded by Thomas Hobbes (1588-1679) and John Locke (1632-1704). Jean Jacques Rousseau (1712-1778) declared that freedom and equality constitute the essence of the natural human rights. As a result of the clash of the individuals' interests they formed the Social Contract theory to set up a political society subjected to a supreme authority. They called for giving people the authority. A ruler would be their representative elected by free choice and could have been ousted by people if he turned into a dictator. Citizenship meant that citizens would follow the religion of their king according to the principle declared in Westphalia in 1648 coinciding with the emergence of the countries based on nationalism. This principle did not terminate religious rifts and struggles. It was accompanied by the spread of the Renaissance and calls for human rights. At that time the concept of citizenship transcended religion as a determining factor. It became a confirmed right in political life and a corner stone in democracy.

From this era the political life has been developed in Europe and the entire West.

Currently citizenship stands on two foundations:

- 1- Democracy: It is based on the concept that power should belong to people. The entire authority emanates from the people according to clear constitutional mechanisms.
- 2- Secularism: It is founded on segregating the religion from the state. Hence, the state does not adopt any faith. Religion becomes a personal matter. The state protects freedom part of which is the religious freedom based on relative neutrality expressed in various countries.

Citizenship in Islamic state: The Dhimma⁴⁹ treaty

An Islamic state consists of a Muslim political community applying Islam as the source of legislation in all affairs. Hence, needless to say that every Muslim living therein is a citizen entitled to all rights and should fulfil all obligations according to legal rules whether based on Islamic texts or resolutions issued by rulers through authorized mechanisms. Nevertheless, Muslim jurists refer to a different type of citizens living in the Muslim land, who are non-Muslims having entered into Dhimma treaty with the Islamic state. They are called "The people of Dar-ul-Islam".

Definition of the Dhimma treaty: It is the permission granted to non-Muslims to live in Dar-ul-Islam (land of Islam) and practise their religion in return for paying Jiziah and abiding by Islamic rules pertinent to worldly affairs.⁵⁰

A Dhimma treaty, like all other contracts, is entered into between two parties:

First party: The state represented by the Imam or his representative.

49 Permanent security status granted to non-Muslims living in a Muslim countries.

50 This definition is based on opinions expressed by Muslim jurists. Check the Kuwaiti Fiqh Encyclopaedia, v7, p121

A Dhimmah treaty is not valid unless signed by the Imam or his representative. This is the opinion expressed by the majority of the Hanbali, Shafi'i and Maliki jurists. This is very similar to the contemporary state's right of granting citizenship to foreigners.

The first party could also refer to the nation represented by all individuals. Hence, every Muslim can enter into a Dhimmah treaty representing the state. This is the opinion adopted by the Hanafi School. This opinion elevates the concept of citizenship and relates it to the entire nation and does not allow it to be a distinctive right of the rulers.

Second party: This refers to the non-Muslim, residing in his Muslim home, who is not willing to become a Muslim, yet remaining a citizen in the land where he has grown up. This could also be applied to foreigners willing to reside in the Muslim land. According to the famous Maliki opinion, Dhimmah treaty is for all types of disbelievers whether they are from the People of the Book or not and whether they are Arab idol worshippers or non-Arab idol worshippers.⁵¹ This opinion has been expressed by the Hanafi School. It is stated that Imam Ahmad had the same opinion excluding Arab idol worshippers, but there are no longer Arab idol worshippers.

Conditions of the Dhimmah treaty:

First: According to the opinion of the majority Muslim scholars, a Dhimmah treaty is permanent. The Muslim state, the first party, shall not revoke it, yet it can be revoked by the second party, if he/she chooses.

Second: The second party should pay Jiziah on an annual basis and abide by Islamic laws except the laws pertinent to worship and family status.

Muslim jurists have stipulated a number of other conditions. These

51 The Kuwaiti Fiqh Encyclopaedia, v7, p123 quoting Al-Khattab v3, p380, and Jawahir Al-Ikleeel, v1, p266

conditions are part of the authority of the ruler. He is entitled to stipulate them or not. In addition, they are dependent on circumstances and the concerned people.

The Rights of Ahlu-dh-Dhimmah⁵²:

Ahlu-dh-Dhimmah are entitled to the same rights Muslims are entitled thereto and have the same obligations Muslims have. This rule has been literally stated by the Hanafi jurists. The same meaning has been expressed by other Muslim schools. This issue is an axiom. Muslim jurists have named the most important rights known currently as human rights including:

Protection of life, wealth and honour: Ali Ibn Abi Talib said: "They have accepted to pay Jiziah so that their wealth and lives should be protected just like our wealth and lives."⁵³

Free movement in all the Muslim land except Mecca and Medina since they are selected for Muslims to perform Muslim rituals:

The preponderant opinion of the Muslim jurists is that Ard-ul-Arab or Jazirat-ul-Arab refers to Mecca and Medina.⁵⁴ **The right of belief, worship and religious practices:** Included in the pact of Najran by the Prophet Muhammad, peace be upon him, is the following: "The lives of the people of Najran and its surrounding areas, their religion, their land, property, cattle and those of them who are present or absent, their messengers and their places of worship are under the protection of Allah and guardianship of His Prophet. Their present state shall

52 Non-Muslims living in the Muslim land

53 Muhammad Rauwas Qala'ji, *Mausu'at Fiqh Ali Ibn Abi Talib*, Beirut, Dar-un-Nafa'is, quoting Al-Mughni, v8, p375 and *Badai' AL-Sanai'*, v7, p111

54 Many authentic Ahadith have been narrated about this point. One of these Ahadith is mentioned in *Sahih Al-Bukhar*. The Prophet, peace be upon him, while being in his death bed, said: "Only one religion is allowed in Jazirat-ul-Arab." The majority of Muslim jurists state that Jazirat-ul-Arab refers to Al-Hijaz i.e. Mecca and Medina

neither be interfered with, nor shall their rights be meddled with. No Usqf (Bishop) shall be removed from his office. The intention is that no change in whatever state everyone is; shall be made (the status quo shall be maintained).”⁵⁵ The Hanafi, Maliki, Shafi’i and Hanbali the majority consensually state that by virtue of the Dhimma treaty Ahlu-z-Dhimmah are entitled to erect churches.⁵⁶

Duties of Ahlu-dh--Dhimmah:

First: Jiziah: An amount of money that should be paid by Ahlu-dh-Dhimmah, either in return for saving their lives or in return for living in the Muslim land, if war occurs. If no war occurs then Jizyah should be freely given by Ahlu-dh-Dhimmah. In this case it is an amount should be decided by mutual agreement. It can happen that Muslims enter into treaty with non-Muslims without stipulating Jiziah especially when non-Muslims live in their land. The Prophet, peace be upon him, entered into a treaty with Bani Madlaj according to which they did not assist his enemy against him. In that treaty no Jiziah was stipulated. Moreover, the Prophet, peace be upon him, entered into the Al-Hudaibiya treaty with the Quraish and no Jiziah was stipulated either. This treaty was supposed to impose a truce for ten years. Another more manifest example is the famous Code of Medina according to which Muslims, Jews and idol worshippers coexisted together in one country which they all defended against any foreign foe. No Jiziah was stipulated in this treaty. All citizens defended Medina. All citizens accepted Allah’s rule and Muhammad’s to settle disputes between Muslims and non-Muslims regarding issues pertaining to worldly affairs. Imam Shafi’i confirmed that the Prophet, peace be upon him, entered into peaceful treaties with all Jews without stipulating Jiziah. Ibn Taymiya stated:

55 Muhammad Hameed Allah, *Al-Wathaiq Al-Madaniya fe Al-'Ahd An-Nabawi*, Beirut, Dar-ul-Irshad, p140 and Al-Balazri, *Futuh Al-Buldan* and Abu Yusuf, *Al-Kharaj*

56 The Kuwaiti Fiqh Encyclopaedia, v7, p130

“This opinion is known to Muslim scholars and is deemed to be Mutawatir (so frequently narrated).⁵⁷

Second: Abiding by Islamic rules in worldly issues:

This refers to issues of public order. Ahlu-dh-Dhimmah enjoy full freedom in issues pertinent to their rites and family status. However, they are subjected to Islamic laws regarding issues pertaining to public order e.g. transactions and punishments. Allah said: “*until they pay the Jizyah with willing submission, and feel themselves Saghirun*”. (Trans. 09:29). According to Imam Shafi’i ‘Saghirun means subjected to Islamic law. He said: “I heard some scholars stating that Sighar means submission to Islamic law. They refuse to embrace Islam and then they are subjected to Islamic law.”⁵⁸ Needless to say, currently, citizens must be subjected to the law of the state. This subjection is not deemed to be subduing. It is a normal result of holding citizenship in a state. In the past this subjection meant being subdued since laws were made by rulers to protect themselves and degrade others. Islamic worldly rules include transactions. Al-Jassas stated: “When it comes to transactions and trade e.g. selling, etc Ahlu-dh-Dhimmah are just like Muslims.”⁵⁹ In spite of the fact that all the contemporary states oblige citizens and residents therein to abide by their financial regulations, Ahlu-dh-Dhimmah are allowed to trade in what is permissible in their religion, yet it could be forbidden in Islam. The majority of Muslim jurists of the four Fiqh Schools stated that Ahlu-dh-Dhimmah are allowed to trade in pigs and alcohol. The Islamic punishments for crimes pertaining to issues regulated by the Islamic worldly law are applicable to both Muslims and Ahlu-dh-Dhimmah except with regard to alcohol since they believe it is permissible. This exemption is observed by virtue of the

57 The Kuwaiti Fiqh Encyclopaedia, v2, p61

58 The Kuwaiti Fiqh Encyclopaedia, v7, p121

59 Al-Jassas, *Tafseer Al-Ahkam*, v2, p436

Dhimmha treaty. As for other crimes that incur the application of Qasas (the Islamic law of Justice), hudud (Islamic specified punishments) and Ta'zeer (discretionary punishments), Islamic law applies to all people residing in the Muslim land. Nevertheless, some Muslim jurists have different opinions regarding a number of exemptions. This disagreement is due to the absence of clear proofs. Ahlu-dh-Dhimmah are subjects to the Islamic juridical system to which Muslims are also subjects to. Nevertheless, regarding their distinctive issues, they can have their tribunals.

Deliberation on Jiziah:

Muslim jurists have expressed various views regarding imposing Jiziah; some jurists stated that it is a punishment for stubborn disbelief.⁶⁰ This cannot be accurate as the majority of Muslim scholars consensually stated that Jiziah is not collected from women, the poor, disabled people, and monks entirely devoted to worship from among Ahlu-dh-Dhimmah. Had it been a punishment for disbelief, all above-mentioned categories would have paid Jiziah.

According to the majority of Muslim scholars, "Jiziah is collected from Ahlu-dh-Dhimmah on the basis that one thing is in return for another."⁶¹

Some of these scholars perceive Jiziah in return for their residence in a Muslim land. This argument cannot be accepted since Ahlu-dh-Dhimmah reside in their land, as Muslim jurists stated.⁶² Some Muslim jurists state that Jiziah is paid by Ahlu-dh-Dhimmah to protect their lives. But Protecting their lives results from paying Jiziah and is not the reason therefore.

In my opinion, the preponderant view is that Jiziah is incumbent on

60 This is the opinion of the Maliki School and some Hanafi jurists. Al-Jassas, Ahkam Al-Qur'an, v3, p101. Also Ibn Al-Arabi, Ahkam Al-Qur'an, v2, p942

61 The Kuwaiti Fiqh Encyclopaedia, v15, p163

62 The Kuwaiti Fiqh Encyclopaedia, v15, p136

non-Muslims as a financial relation between Ahlu-dh-Dhimmah and the Muslim society wherein they choose to live, enjoying all human rights including social collaboration enjoyed by all citizens. This is the opinion of some Hanafi jurists. In return for Jiziah, the Ahlu-dh-Dhimmah enjoy the following:

- 1- Social Collaboration:** In return for Zakah, Muslims avail of the social collaboration system. Ahlu-dh-Dhimmah, likewise, avail of the social collaboration system. Hence, they should contribute thereto. Zakah, for Muslims, is a rite, so it is not fair to impose an Islamic rite on Ahlu-dh-Dhimmah who are not Muslims. So, alternatively they pay Jiziah. To attest to that, 'Umar Ibn Al-Khattab, when passing by an old blind man begging, said: "Which People of the Book do you belong to?" The man said: "I am a Jew." 'Umar asked: "Why are you begging?" The man said: "Jiziah, need and old age." 'Umar held his hand and accompanied him to his house. He called the person in charge of the Muslim treasure house and said to him: "See how to help him and his likes. By Allah, we are not fair to him if we took Jiziah from him when he was young and let him down when he is aged."⁶³

This meaning has been reiterated by the message sent by Khalid Ibn Al-Walid to the people of Hiera: "-----old people, who cannot work or have health problems or were rich and became poor and so receive charity from people of their faith, are exempted from Jiziah and receive an allowance from the Muslim treasure house as long as they live in the Muslim land."⁶⁴

It is well-known among Muslim scholars that Jiziah is not collected from the poor who are jobless. This opinion is adopted by the majority of the Hanafi, Maliki and Hanbali jurists. It is also the famous opinion

63 Abu Yousuf, Al-Kharaj, p150

64 Abu Yousuf, Al-Kharaj, p144, Abu 'Ubaid, Al-Amwal, v1, p46

in the Shafi'i school. Their proof is the Quranic verse in which Allah sated: "*Allah burdens not a person beyond his scope.*" (Trans.02:286) On this basis they have consensually agreed that a Dhimmi is exempted from Jiziah if he/she faces financial hardship.⁶⁵ This exemption does not affect their status. Hence, they should abide by the regulations pertaining to the public order. At the same time they avail of their rights as citizens in the Islamic state. This is clearly manifested in the above-mentioned story about 'Umar and the message sent by Khalid Ibn Al-Walid to the people of Haira. Both of them indicate that Ahlu-dh-Dhimmah pay Jiziah and in return they avail of the Islamic social collaborative system.

2- Exemption from the Military Service: In return for Jiziah, the Ahlu-dh-Dhimmah are exempted from military service. It is obligatory only on Muslims, as war is to defend the Muslim state by means of Jihad for the sake of Allah. It is an act of worship that if imposed on Ahlu-dh-Dhimmah will form hardship for them. Muslim jurists have consensually agreed that defending Ahlu-dh-Dhimmah is an Islamic obligation. According to the Shafi'i school, if defending Ahlu-dh-Dhimmah is not possible, then they are exempted from Jiziah. History attests to that. Abu 'Ubaidah Ibn Al-Jarrah wrote to the rulers in Greater Syria commanding them to pay back the Jiziah they had collected: "It has been reported to us that armies have been marched against us. You have stipulated that we protect you. It is beyond our capability. Hence, we pay you back what we have collected from you. We will hold fast to the conditions we agreed on, if Allah gives us victory against them."⁶⁶

3- Exemption for Jiziah: Are Ahlu-dh-Dhimmah exempted from Jiziah if they join the Muslim army? Throughout all my reading of the Muslim

65 The Kuwaiti Fiqh Encyclopaedia, v15, pp187-203

66 The Kuwaiti Fiqh Encyclopaedia, Bab Al-Jiziah quoting Hashiyat Ash-Shalabi Ala harh Ad-Daqaiq, v3, p278

jurists' opinions I only found one statement in this regard made by Ash-Shalabi in his Hashiah on Sharh Kanz Ad-Daqa'iq: "If the Imam seeks Ahlu-dh-Dhimmah's help, so they fight with him, they will pay Jiziah since according to Islamic legislation Ahlu-dh-Dhimmah's support is finance and not their lives."⁶⁷ This means if Ahlu-dh-Dhimmah take part in war they will not be exempted from Jiziah. Dr. Abdulkareem Zidan, a contemporary prominent Muslim jurist, stated: "Jiziah is paid in return for protection. If Ahlu-dh-Dhimmah take part in defending the Muslim land, then they themselves have fulfilled the duty for which they pay Jiziah." Dr. Abdulkareem Zidan quoted a number of historical events that clearly indicate that Ahlu-dh-Dhimmah are exempted from Jiziah if they take part in defending the Muslim land.

First:

The message sent by 'Utbah Ibn Farqad to the people of Azerbaijan:

"In the name of Allah, Most Gracious, Most Merciful. This is the assurance of safety regarding life, wealth and religious practices granted to the people of Azerbaijan and its surroundings regardless of their faith by 'Utbah Ibn Farqad appointed by 'Umar Ibn Al-Khattab, the Commander of the Believers, in return for Jiziah that they can afford. Whoever faces financial difficulty in a year he/she will be exempted thereof."

Second:

At-Tabari reported that King Shar Baraz, who lived near Armenia, requested from Suraqa Ibn 'Amr, the ruler of this area, to give him and his people exemption from Jiziah and in return they would carry out operations against their enemy. Suraqa said: "We have agreed on this. It became a precedence applied for non-Muslims fighting against Muslims' enemies. Non-Muslims who could not afford Jiziah took part

67 The Kuwaiti Fiqh Encyclopaedia, Bab Al-Jiziah quoting Ash-Shalabi Hashiah on Sharh Kanz Ad-Daqa'iq, v3, p278

in war and were exempted therefrom. Suraqa wrote to ‘Umar inquiring and ‘Umar gave his consent.”

Third:

Suraqa’s message to the people of Armenia: “In the name of Allah, Most Gracious, Most Merciful. This is the assurance of full safety regarding life, wealth and religious practices granted to the people of Armenia by Suraqa Ibn ‘Amr appointed by ‘Umar Ibn Al-Khattab, the Commander of the Believers. In return they take part in defending the land against raids.”

Fourth:

Suwaid’s message to the King of Jorje: Suwid Ibn Muqrin, the commander of the Muslim army in Persia, stated in his message: “In the name of Allah, Most Gracious, Most Merciful. This is a message from Suwaid Ibn Muqrin to Razban Saul Razban and the people of Dustan and all people of Jorje. You become Ahlu-dh-Dhimmah and we will protect you. Whose help we seek will be exempted from Jiziah.”⁶⁸

Fifth:

When Al-Jarajimah, residing in Al-likam near Antakya, broke the treaty, Abu ‘Ubaidah Ibn Al-Jarrah deployed a Muslim army thereto and conquered it again. Then he appointed Habib Ibn Muslim Al-Fahri as a ruler. The Muslim army, then, conquered Al-Jarjuma (the location of Al-Jarajmah). The inhabitants did not fight and requested safety assurance and in return they would assist Muslims and be their eyes in Al-Likam but they would not pay Jiziah. The Muslims agreed. All people in this city entered into this treaty.⁶⁹

These above-mentioned historical events occurring in the time of the Prophet Muhammad’s Companions, clearly indicate that Ahlu-

68 Tarikh At-Tabari, v5, p250

69 Ibid quoting the history of Al-Balazdri, p217

dh-Dhimmah who fight with Muslims and defend the land of Islam are exempted from Jiziah. It was a commonly recognized issue. No contradicting events have been reported. ‘Umar Ibn Al-Khattab, when Suraqa told him about the Jiziah exemption, approved of it. This means there was consensus on this matter at the time of the Prophet’s Companions.

Hence, Ahlu-dh-Dhimmah are exempted from Jiziah if they take part in defending Muslim land or even if they prepare themselves for that since actual participation is not stipulated.

The Abadiyah were exempted from Jiziah since they took part in defending Muslim land. In Shar’ An-Neel, it is stated: “The Imam should not collect Jiziah from Ahlu-dh-Dhimmah if they help him against his enemy with weapons.”⁷⁰

Is Jiziah a prerequisite of Dhimmah treaty?

Some Muslim scholars perceive that the legitimacy of non-Muslims’ residence in Muslim land is dependent on imposing Jiziah. To support their argument they quote the Quranic verse: Allah said: *“Fight against those who believe not in Allah, nor in the Last Day, nor forbid that which has been forbidden by Allah and His Messenger and those who acknowledge not the religion of truth among the people of the Scripture, until they pay the Jiziah with willing submission.”* (Trans. 09:29)

They state that this verse abrogates all previous rules. They support their argument by quoting many authentic Ahadith. The Prophet, peace be upon him, said: “If you encounter your polytheist enemies, invite them to three matters. If they agree on any of them then leave them alone. Invite them to Islam. If they accept Islam, then leave them alone. If they reject it, then ask for Jiziah. If they agree, then leave them alone. If they refuse then seek Allah’s help and fight against them.”⁷¹

70 Ibid quoting Sharh An-Neel, v10, p408

71 Muslim, Sahih Muslim, v3, p1357

In my understanding, all verses of the rules of war are related to their respective circumstances. They do not abrogate each other. These verses represent a category of Insa' mentioned by Imam Souti. Insa' means that a rule is dependent on certain circumstances. When the context occurs, the rule applies and vice versa. Hence, Jiziah is a prerequisite of the Dhimma treaty only if it is preceded by war. If there is no war then Jiziah is not a prerequisite of the Dhimma treaty. It can be based on other alternatives reached on the bases of mutual agreement. The following argument proves it:

The above-mentioned verse was revealed to encourage Muslims to fight against the Byzantines as they killed Al-Harith Ibn 'Umair Al-'Uzdi who was sent to them as a messenger for Allah's messenger. He was killed by Shraihibeel Ibn 'Amr Al-Ghassani appointed by Caesar as a ruler of Greater Syria. Killing him was a declaration of war against Muslims. Messengers were not to be killed. The Prophet, peace be upon him, prepared the army of Mu'tah to retaliate. The Muslim army, made up of three thousands, did not achieve victory as it was confronted by a force of one hundred thousand.

The Muslim army withdrew. This occurred in the 8th year of Hijra. A year after that the Prophet, peace be upon him, came to know that the Byzantines had prepared a great army to combat the Muslims. So, the Prophet, peace be upon him, issued his commands to prepare the Muslim army (Al-'Usrah). It is clear here that Muslims did not initiate violence but rather responded. Hence, the Muslims' application of violence was due to the Byzantines' application of violence. Imposing Jiziah on them was again a result of this situation.

During the time of 'Umar Ibn Al-Khattab, Muslims entered into treaties with the people of An-Nubah in Egypt without stipulating Jiziah. Historians explain that it was due to the fact that Muslims were unable to conquer their land since the Nubians were skilled archers.

This treaty was like a commercial treaty according to which Nubians would give Muslims three hundred animals as presents on an annual basis. In return, Muslims would give Nubians an equivalent amount of food as a present on an annual basis. This treaty was approved of by 'Uthman Ibn 'Affan, the third Muslim Caliph, and his successors. It was also approved of by 'Umar Ibn 'Adulazeez. It remained in effect for more than 600 years. It continued until the Fatimid era.⁷² Had Muslims entered into this treaty since they were unable to conquer the Nubian land, it would not have continued for such a long period as Muslims became so powerful that if they chose to conquer the Nubian land and impose Jiziah on Nubians, they would have been able to do it.

During 'Umar's period, Muslims also entered into treaty with Al-Jarajima. According to this treaty, Al-Jarajima were the eyes for Muslims against Byzantines and in return they were exempted from Jiziah, yet they lived in Jarjuma city deemed to be part of the Muslim land.

The previously reported four cases, mentioned by Dr. Abdulkareem Zidan, in which Muslims and Ahlu-dh-Dhimmah agreed on exemption from Jizia provided they take part in fighting. This refers to the possibility of entering into Dhimmah treaty without imposing Jiziah if the two parties agree on an alternative.

From Dhimmah to Citizenship:

Since the collapse of the Ottoman state, which occurred in the beginning of the 20th century, the Muslim world has been divided into many countries, most of which suffered occupation. That was followed by liberation movements, which resulted in liberating these occupied countries. Due to their conviction of the concept of the contemporary state, the ruling authorities enacted contemporary laws of equality

72 Al-Balazdi, *Futuh Al-Buldan* and also *Tarikh At-Tabari*

among all citizens in all Muslim countries. This was followed by enacting detailed legislation, which was binding on all citizens. Most of this legislation complied with the Shar'ah, yet some included fundamental contradictions.

This marked the end of the era of Dhimma in all Muslim countries. Henceforth, Muslims and non-Muslims became subjected to what is known as citizenship. Since citizenship, due to positive legislation, includes a number of contradictions with Islamic legislation, many of the opponents of Islamic Awakening think that citizenship contradicts the Dhimma treaty known in Muslim history. Hence, they demand the application of the Islamic historical rules including Dhimma treaty and Jiziah. This call caused apprehension for non-Muslims. Enemies took advantage of this apprehension to create disharmony among the people of one and the same land. So I would like to illustrate this point:

Dhimmah between the Islamic Contract and Historical Practices:

In the above-mentioned pages, we stated the Islamic foundation for Dhimmah treaty, which is not, in my opinion, different to citizenship except in superficial details. The Dhimmah treaty is based on the concept that non-Muslims in a Muslim land enjoy all rights as citizens except for certain rules pertaining to their religion in return for abiding by Islamic worldly legislation i.e. laws organizing transactions, punishments, etc.

In addition, they pay a certain amount and in return they are exempted from military service and they avail of their belonging to Muslim society. They avail of the Muslim social collaboration system to which Muslims contribute by paying Zakah which is an act of worship. It is fair that non-Muslims contribute thereto but under a different name so that they would not be compelled to observe an Islamic act of worship. Hence, women, children and those who cannot earn are exempted from

Jiziah. Muslim jurists have expressed various opinions regarding the amount of Jiziah. 'Umar Ibn Al-Khattab agreed to replace it with the same amount of Zakah for the Christians of Bani Taghlab who disdained to pay Jiziah. The majority of Muslim scholars state that the amount of Jiziah should be determined on the basis of mutual agreement. As mentioned above, Muslims entered into the Dhimmah treaty without being paid Jiziah.

As for the history of the Dhimmah treaty, it was affected by rulers' practices. Sometimes they respected Ahlu-dh-Dhimmah and sometimes they oppressed and degraded them. But also some of Ahlu-dh-Dhimmah cooperated with the Muslims' enemies. Thus they gave justifications to the rulers' violations. Even Muslim jurists had different attitudes; some, e.g. Al-Auza'i, exerted great efforts defending Ahlu-dh-Dhimmah. Due to being affected by certain understanding, other jurists insisted on discrimination and degradation using certain texts and incidents for justification.

Citizenship is a natural development of Dhimmah treaty:

Nowadays, the concept of citizenship is founded on equality among all citizens in terms of their rights and responsibilities before the state while preserving freedom of worship and belief. This was the foundation of the Islamic state which originated in Medina. By and large Muslims preserved this foundation for centuries until the fall of the Ottoman state, yet a number of violations occurred. Muslims, who called this formula the Dhimmah treaty, called non-Muslim citizens Ahlu-dh-Dhimmah. The only difference between citizenship and the Dhimmah treaty is related to the state's legislation that specify citizens' rights and responsibilities. Non-Muslim state legislation is enacted by a legislative authority, whereas in a Muslim state only detailed legislation is enacted by a legislative authority in light of the Islamic

fixed rules stated in the Qur'an and the Sunnah. When a people choose to abide by Islamic laws, it does not mean that they have to be binding for non-Muslims if they are permissible or forbidden according to their religion. This difference shows that citizenship in an Islamic country guarantees more religious freedom. Currently Muslims residing in secular countries are forced to break their Islamic rules e.g. Hijab and family status, whereas throughout Muslim history it has never been recorded that non-Muslims were forced to break their religious rules.

On the basis of the above-mentioned, I do not see any difference between the Dhimmah treaty based on Islamic foundations and citizenship in terms of the principal equality of all citizens and guaranteeing religious freedom. As for what seems to be inequality based on detailed Islamic rules, it is due to religious freedom.

As for Jiziah, it is an Islamic obligation if war occurs, yet I think it can be overlooked in the case of reaching an agreement according to which non-Muslims abide by regulations of public order. In addition, it should secure justice and equality among all citizens in terms of defending the country and obligations of social collaboration. This is confirmed by the fact that the majority of Muslim scholars differentiate between the forced Jiziah and that Jiziah based on reconciliation. The amount of Jiziah based on reconciliation can only be determined by mutual agreement. Moreover, the term Jiziah can be replaced with any other term as 'Umar did. On the basis of Bani Taghlab's request, 'Umar substituted it with a doubled Zakah. Moreover, it happened in the early periods that Jiziah was relinquished in return for Ahludh-Dhimma's participation in war.

According to the Islamic convention, the Dhimmah treaty is in conformity with citizenship:

The International Federation of Muslim scholars dedicated a chapter of Islamic Convention issued in 2007 to Ahludh-Dhimma and citizenship. I quote: "When non-Muslims coexist with Muslims in a Muslim land while they are indigenous citizens, they are in a state of perpetual security treaty known as the Dhimmah treaty. The term Dhimmah refers to treaty, guarantee and security. They have been given this title since they are entitled to the security of Allah, His Prophet and the Muslim community. In other words, they are entitled to Islamic protection in Muslim society. They are entitled to enjoy security and tranquillity. By virtue of the Dhimmah treaty they entered into with Muslims, they are entitled to security guaranteed by Muslims. This Dhimmah is granted by the state to the citizens and residents living therein. Hence, they are entitled to their rights as citizens and have the obligations of citizenship that they should fulfil.

Hence, Ahlu-dh-Dhimmah are Ahluadar –ul-Islam (indigenous people of Muslim land) as described by Muslim jurists in various schools of Fiqh. The term Ahl-u-Dar, a term applied by Muslim jurists, is equivalent to today's political term "citizenship". In fact citizenship is a development of the Dhimmah treaty initiated by Muslims.

If due to ignorance of its real meaning and misconceptions based on historical violations, the term "Dhimmah" is no longer accepted by many people, we have no objections to replacing it with the today's frequently applied term "citizenship".

Muslims were the first people to give non-Muslims residing in Muslim land their rights perceiving them entitled to not only the Muslims' security but rather Allah's and His messenger's security.

Dhimmah Treaty and Citizenship:

If one considers the Dhimmah treaty thoroughly, one will find that most of it is in conformity with the principles of citizenship:

The Dhimmah treaty is a perpetual treaty inherited by children and is not in need of renewal and thus is citizenship.

Neither Muslims nor their rulers have the right to terminate the Dhimmah treaty, yet the Ahlu-dh-Dhimmah have the right to terminate it. Likewise, by virtue of citizenship, one can gain citizenship and the state has no right revoke it, yet one can give it up.

If one terminates his Dhimmah treaty, it does not impact on his wife and children even if they were under age. They will remain holding citizenship of Dar-ul-Islam. Such principle is not available in any other system. It makes the Dhimmah treaty equivalent to today's citizenship.

The Dhimmah treaty does not necessarily result from war. According to the majority of the Muslim jurists, it may result from residing in a Muslim land for at least one year. If a non-Muslim is granted permission to stay in a Muslim land and he/she wishes to live in the Muslim land for a period longer than one year, he/she is given the choice either to gain citizenship in Dar-ul-Islam, so he/she becomes Dhimmi or alternatively he/she returns home. This is similar to acquiring citizenship after living a number of years in a country according to contemporary laws.

The Dhimmah treaty is entered into by a Muslim ruler or his representative. It is just like citizenship granted by the state.

All people can enter into a Dhimmah treaty with Muslims regardless of their faith and even if they do not have religion, provided they agree to live with Muslims and abide by the Islamic laws pertaining to public order. This opinion is adopted by the Hanafi School. It is also narrated as an opinion of the Maliki and Hanbali Schools. It is just like granting citizenship by a state to someone regardless of his religion.

The rights of Ahlu-dh-Dhimmah, in principle, are similar to the rights

of citizenship. They enjoy these rights by virtue of the Islamic well known rule: "They enjoy the same rights we enjoy and they have the same obligations we have." They enjoy their complete rights of worship and belief and practices pertinent to family status. They avail of the protection of the Muslim state regarding their lives, wealth and honour. They are entitled to social welfare just like Muslims. They abide by Muslim laws pertaining to public order. They are subject to general Islamic jurisdiction. They are entitled to apply to Muslim courts to protect themselves against oppression even if it was practised by the Muslim Caliph. Dhimmi's rights are just like Muslims' rights.

We perceive that the basic principles of contemporary citizenship are in conformity with the Dhimmah treaty. It could be in conformity with other Islamic prerequisites, yet many prerequisites stated by Muslim jurists were due to their contexts and are not necessarily binding until the Day of Resurrection.⁷³

73 Islamic conviction, International Federation of Muslim scholars, pp73-74

Third Chapter
Muslims as Citizens in Europe
Responsibilities and Rights

Muslims as Citizens in Europe Responsibilities and Rights

In the first chapter of this study we have confirmed the legality of coexistence and supported it by a number of proofs. We also highlighted that the concept of Wala' and Bara' does not contradict, in principle, the legality of coexistence. In addition, we elaborated on the Islamic foundations of coexistence i.e. accepting others, justice, cooperation and morality. In the second chapter we elucidated the concept of citizenship and its historical development. We also compared it to the Dhimmah treaty in terms of Islamic rules and Islamic history. In this chapter we will elaborate on Muslims as citizens in Europe.

Coexistence only occurs within a state's framework. This means that a group of people agreed to coexist with another group that has a different religion, race or ideology while being subjected to one authority that runs their affairs, organizes their relations and determines their policies. In other words, coexistence means to belong to a certain country and support it. Can a Muslim belong to a non-Muslim country? Can a Muslim support a non-Muslim country? If this is permissible, are there conditions that this country has to fulfil? What are the other Muslim's obligations?

First: Muslims' belonging to a non-Muslim country:

Yes, it is permissible for a Muslim to belong to a non-Muslim country and support it. The Prophet Muhammad, peace be upon him, permitted his Companions to remain coexisting with their polytheist people under non-Muslim tribal authority which is similar to today's state authority. Moreover, the Prophet Muhammad, peace be upon him, commanded his Companions to migrate to Abyssinia stating that there was a king "under

his authority no one suffered oppression.” This indicates that the Prophet Muhammad, peace be upon him, permitted Muslims to live in a place where the authority was a non-Muslim authority provided it does not oppress them. History books relate that a revolution was conducted against the Negus and the migrant Muslims decided to fight with him against the revolutionists but he declined. This means it is permissible to give Wala’ to a non-Muslim authority provided this support is practised within the legal rights. Muslim history is teeming with events of millions of Muslims who suffered oppression in their non-Muslim homes, yet they did not migrate therefrom. Some of these countries became Muslim lands while others did not. Up until now 1/3 of the world’s Muslim population resided as minorities in countries ruled by non-Muslim authorities. This is attested to by the fact that if someone embraces Islam, migration to a Muslim land does not become an obligation on him/her as stated consensually by the majority of Muslim scholars. It remains permissible for him/her, but it may turn into an obligation or a prohibition according to the surrounding circumstances.

Second: Conditions of belonging to a non-Muslim country:

- 1- That the state should not oppress Muslims: The Prophet, peace be upon him, justified his permission to the Muslim migrants to Abyssinia saying: “It is ruled by a king under whose authority no one suffers oppression.” Allah said: “*And as for those who emigrated for the Cause of Allah, after they had been wronged, We will certainly give them goodly residence in this world, but indeed the reward of the Hereafter will be greater; if they but knew!*” (Trans. 16:41) This means it is permissible for those who suffer oppression to migrate but if they are not oppressed it is permissible for them to remain in such country.
- 2- That residence in non-Muslim country should not negatively impact on Muslims’ religiosity: If a Muslim’s residence in his home affects

negatively his religiosity, it is permissible for him to migrate to another country. Allah said: “*Then, verily! Your Lord - for those who emigrated after they had been put to trials and thereafter strove hard and fought (for the Cause of Allah) and were patient, verily, your Lord afterward is, Oft-Forgiving, Most Merciful.*” (Trans. 16: 110) Hence, it is permissible to emigrate from one’s home to another country if his residence in his country has a negative impact on his religiosity. But if not, then it is permissible for him to remain in his non-Muslim land.

Third: Muslims’ responsibilities in a non-Muslim country:

A Muslim, residing in a non-Muslim country that neither oppresses him/her nor negatively impacts on his religiosity, is obliged to observe, when dealing with all people, Islamic morality. He should also be eager to cooperate with them in terms of what is permissible, obligatory or recommended. He should be fair with them even if it be not in his favour. He should fulfil his obligations in a way that does not contradict his religious freedom and obligations. He should not betray the society wherein he lives or the state to which he belongs since betrayal in no circumstances can be permissible.

Fourth: Contradiction of national duties and Islamic rules:

In the case of a contradiction between Islamic commitments and the national duties of the country to which the Muslim belongs, he should exhaust every possible means to meet them. If this proves to be impossible, then he should give priority to what is more important. If he gives priority to his religious obligation, he should declare it, take responsibility therefore and accept any legal punishment incurred thereby. He should make it clear that he makes this choice as a result of the conflict between the national duties and his religious convictions.

If he gives priority to his national duties, he could be a sinner in the sight of Allah. But also he could be forced to do it, so Allah, if he wills, will forgive him.

It is most likely that conflict between national duties and Islamic rules will occur. It does not negate the permissibility of Muslim citizenship in a non-Muslim country, but rather gives the Muslim one option i.e. applying Fiqh of priorities to make his choice. At this point it should be marked that contradiction may occur between Islamic obligations e.g. family commitments on one hand and commitments towards the Muslim nation on the other hand.

Fifth: Responsibilities of Muslim citizen in Europe:

When a Muslim becomes a citizen in Europe he encounters a series of questions starting with the Islamic permissibility of his citizenship and ending with the level of fulfilling his national responsibilities. In the above-mentioned pages we have confirmed the Islamic permissibility of Muslim citizenship in Europe, since all European countries are bound by human rights convictions issued by the United Nations. Hence, principally the Muslim does not suffer oppression and does not face religious difficulties in Europe, yet he might face a number of challenges. Previously we stated that emigration from a non-Muslim home is not an obligation. It might not even be recommended. It could be permissible. Following is a deliberation on the level of the Muslim's observation of citizenship rights and responsibilities in Europe:

1- Religious obligations: We will not elaborate on common Muslim obligations in terms of acts of worship, the permissibility and the impermissibility in all life affairs. We will highlight the utmost important obligations of Muslim as a citizen in Europe:

First: Dawah is the Muslim's first obligation especially if he resides in a non-Muslim country. According to the majority of Muslim scholars, it is a collective duty. Allah said: *"Invite (mankind) to the Way of your Lord (i.e. Islam) with wisdom and fair preaching"* (Trans. 16: 125) Da'wah in non-Muslim countries is in need of legislation that

secures the freedom of preachers and protects them against harm. It also requires that Muslims should be so influential in their society that they can protect Muslim preachers.

Second: Struggling against corruption and exerting efforts in every possible field to achieve progress is the second Muslim obligation. Thus was the call made by the Prophet Shuaib, peace be upon him,: Allah said: *"And to (the people of) Madyan (Midian), (We sent) their brother Shu'aib. He said: "O my people! Worship Allâh! You have no other Ilâh (God) but Him. (Lâ ilâha illallâh (none has the right to be worshipped but Allah)" Verily, a clear proof (sign) from your Lord has come unto you; so give full measure and full weight and wrong not men in their things, and do not do mischief on the earth after it has been set in order, that will be better for you, if you are believers."* (Trans. 07:85) It is the same divine command to Muslims. Allah said: *"And do not do mischief on the earth, after it has been set in order"* (Trans. 07:56) We believe that reformation and struggling against corruption cannot be true and comprehensive unless it is practised in light of Islam and Shari'ah. Nevertheless, this does not forbid struggling against corruption, if possible, and accomplishing reformation of certain aspects in western societies even though they are not Muslim societies. On the basis of human nature and the influence of the divine messages on many people Muslim citizens can cooperate with non-Muslim citizens on common issues. Reformation and struggling against corruption in certain societal aspects serve the entire society and in particular Muslims. This cannot be accomplished unless Muslims have an influential political contribution.

Third: Preserving Muslim identity: Muslim cannot achieve this as an individual but rather as a group. Muslims can preserve their identity

if they form a strong cohesive group demanding their distinctive rights and sharing with other citizens the demand for public rights. The Prophet, peace be upon him, said: “Do not be blind followers saying if people do good so do we and if people do wrong so do we, but rather prepare yourselves that if people do good so do you and if people do wrong so do not do wrong.”⁷⁴

2- Conflict between religious obligations and civic duties:

When a Muslim agrees to live in his European home, he has committed himself to the duties of citizenship, participation, dealing with people according to effective laws and subjection to procedures taken by the ruling authorities. Muslims have no problem in fulfilling most of these duties. But what can a Muslim do if his civic requirements are religiously forbidden? This real problematic situation is not a problem exclusively faced by Muslims living in non-Muslim countries. Muslims living in Muslim countries face this problematic situation too, since most of the Muslim countries do not apply Shari’ah. Rules of Shari’ah are relatively operated in various Muslim countries in a way that sometimes makes no difference between them and non-Muslim countries. For instance, the hijab is banned in some secular countries and likewise it is banned in some Muslim countries. Civic marriage is the only marriage recognized by the state in some European countries. The same rule is applicable in some Muslim countries. In all these cases a Muslim is supposed to match his religious obligation with his civic duties, if possible. It will be good if he can legally get an exemption from any civic duties that contradict his religious obligations. But if he cannot, then it could be justified by deeming it a necessity. Allah said: “*Allah burdens not a person beyond his scope*”(Trans. 02:286). He may choose not to fulfil his civic duties violating the law and takes responsibilities therefore, if he can.

74 Attirmidhi, Bab Al-Bir, classified it as Hassan and Ghareeb

This is an exceptional case, so it should not be used as a foundation on which impermissibility of a Muslim’s residence in a non-Muslim land can be based. It is permissible for a Muslim to live anywhere provided his fundamental rights and religious freedom are secured. Then he should fulfil his duties as a citizen and demand his rights in light of Islamic rules. The fact that certain civic duties are impermissible from a religious point of view is not a sufficient ground to forbid citizenship and migration as long as the rights Muslims enjoy are more important than fulfilling duties. Al-‘Iz Ibn ‘Ad-us-Salam stated: “If the advantage is greater than the disadvantage we accept both of them, but if they are equal one makes the choice.”⁷⁵

A Muslim should be an asset to his society. He should exert efforts to achieve progress therein. He should be eager to reform corruption, enjoin good and forbid evil. He should invite people to Allah, participate in every permissible good, discuss with others all moral issues, cooperate in every activity that pleases Allah and refrain from taking part in any sin while being involved in social and political life aiming to reform the society to which he is related. He should spread the spirit of tolerance, dialogue and integration. He should support justice and the prevalence of human values over material values. He should do his best in all fields and follow the Prophet’s guidance as expressed in a hadith in which he said: “A number of passengers were on the upper deck while others were on the lower deck. To get water they had to pass by the passengers on the upper deck. Hence, they suggested making a hole in their portion (lower deck) so that they could get water without disturbing the passengers of the upper deck. If the passengers on the upper deck allowed them to implement this suggestion they all would be destroyed, whereas if they did not allow them they and all passengers would be saved.”⁷⁶ It

75 Attirmidhi, Bab Al-Bir, classified it as Hassan and Ghareeb

76 Sahih Al-Bukhari, Kitab Al-Sharikah, Bab Hal Yuqra’ Fe Al-Qismah Walistiham Feeh

is a wonderful description of a cohesive society in which all members cooperate to protect all members and accomplish their interests.

3- Military Service:

One of the most important conflicts between civic duty and Islamic rules is the legislation of military service. The Muslim European citizen abides by the effective laws therein in general. The most important civic duty is military service. In the meantime, the Muslim abides by his Islamic rules as an act of obedience to Allah and His Messenger, peace be upon him. Can a Muslim join a non-Muslim army? What are the Islamic rules a Muslim should abide by if he joins a European army?

This matter is pertinent to his being a citizen in a non-Muslim country. If citizenship in a non-Muslim country is permissible, as we have explained in the above-mentioned verses, then commitments pertaining thereto should have the same rule. Most of the contemporary Muslim scholars have consensually expressed the permissibility of Muslims' citizenship in non-Muslim land. Consequently their service in the army of this land is a normal result.

When a Muslim citizen serves in a European army, he realizes that war in cases of defending the land and rights, which is a national duty that he should fulfil by virtue of citizenship, is Islamically permissible since a Muslims should defend the truth and support the wronged regardless of their faith and nationality. It is more desirable when he is defending his home, where he lives, and his fellow citizens with whom he lives. In the Prophet's biography in the Meccan period and with the Jews, there are manifest proofs for this.

But if the military activities transcend defending the land and rights and be an act of trespassing others' land and violating their rights, it is impermissible for a Muslim to be involved in this transgression

whether it violates Muslims' or non-Muslims' rights. Allah said: "*but transgress not. Truly, Allah likes not the transgressors*" (02:190) Hence, if a Muslim serves in a European army, it is not permissible for him to be involved in any act of aggression even if it is against non-Muslims. If a European army attacks China or Japan, the Muslim should not be involved in this aggression. The issue is not dependent on the religion of a certain group but rather the fact that the Muslim soldier fights to defend rights and does not transgress on others regardless of their faith.

The prohibition of being involved in aggressive military operations is more recommended if this aggression is against a Muslim country. In this regard, many clear textual proofs that deter Muslims from committing this violation have been narrated. For instance, the Prophet Muhammad, peace be upon him, said: "If two Muslims encounter each other with swords, both of them will go to hell." It was said: "The murderer is wrong but what about the murdered." The Prophet, peace be upon him, said: "He was eager to kill his brother."⁷⁷ It is self-evident that this covers all Muslim's circumstances. On this basis we clearly state that Islamically it is forbidden for the Muslim soldier to fight with his national army transgressing on his Muslim brothers and sisters. It might be difficult for a Muslim soldier to abide by this Islamic obligation. Nevertheless, it should be made clear to him and to European societies and governments. At this point it should be marked clearly that by law in many European and western countries a soldier can be exempted from fighting on the basis of conscientious objection or he might have no option but to resign. If that is the only option, then the Muslim soldier should resign. It is not permissible for him to take part in oppressive war against his Muslim brothers and sisters or even others.

77 Al-Bukhari, Kitab Al-Fitan, Bab Idhathaqa Al-Muslemain Besaifhima

The Muslim's Wala' (loyalty, sincerity and support) to his religion comes first. Nevertheless, this does not mean that his Wala' to his country is a second class Wala'. It is part of his Wala' to his religion. However, Wala' to one's country does not mean a complete Wala' to the state that covers everything it does, otherwise political opposition would be accused of having no Wala' to the country. This would contradict the political pluralism and the principles of democracy. Hence, in certain cases a soldier is exempted from war on the basis of the conscientious grounds.

The Muslim's Wala' to his Muslim home does not justify implementing a ruler's commands if they are sins. On the contrary, he should disobey his ruler, since the Prophet, peace be upon him, said: "Let there be no obedience for a creature if it involves disobeying the Creator."⁷⁸ In such case, a Muslim's disobedience should not discredit his Wala' to his country.

Islam aims at the prevalence of moral and human values which Allah has legislated in all societies. Allah said: "*Say "Truly, my Lord has guided me to a Straight Path, a right religion, the religion of Abraham, Hanifa (i.e. the true Islamic Monotheism) and he was not of the polytheists."* (Trans. 06:161) Allah has appointed Muslims as protectors of these values whether they live in Muslim society or elsewhere. Allah has made it an incumbent duty on Muslims to disobey the ruler if he overlooks the values.

4- The Rights of Muslim citizens in Europe:

Over the past two centuries human rights have developed considerably. Most countries worldwide competed with each other for naming human rights and protecting them by their constitutions. Hence, citizens, residents and visitors enjoy them.

⁷⁸ Sahih Muslim, Kitab Al-Imarah, Bab wujub Ta'at Al-'Umara' Fe Ghair Ma'siyah

Nowadays Muslims residing in Europe enjoy all citizens' rights. This is a great achievement, since in general these rights guarantee religious freedom for Muslims, so they face no difficulties regarding their religion. These rights secure for Muslims their religious practices, inviting people to their beliefs and setting up organizations and associations that can help with this invitation. All this can be done under the legal protection provided by laws securing human rights.

On the basis of the above-mentioned, Muslims have no problems leading a Muslim life in light of the rights they enjoy as citizens in non-Muslim country. They can relinquish any right forbidden from an Islamic point of view, as there is no legal accountability for relinquishing rights. There is no doubt that Muslims avail of all rights.

When it comes to political participation of which Muslims avail as a group more than individuals, disagreement becomes greater. Many Muslims demand shunning participation in politics supporting their view with many arguments. Hence, I will not elaborate on all the rights of Muslim citizens in Europe. I will limit it to the right of political participation:

1- The right of political participation:

The idea of not participating in politics has been imported from Arab and Muslim countries as many Islamists migrated to the West as a result of persecution they suffered in their homes. They came to the West with this idea. Some Da'iahs (preachers) from among them thought that forbidding political participation in the West is more recommended than it is in a Muslim land since in spite of the amount of deviation and corruption spread in Muslim societies they still have a level of Wala' for Islam, whereas western societies have nothing to do with Islam. In general they are similar to the pre-Islamic societies. Hence, one should sever his relations with them until they become Muslims. Let alone, political participation means accepting their laws

and this is impermissible. It may also lead to compromising and this is impermissible too since it involves overlooking some Islamic rules. We will illustrate this issue in the following two points:

2- Textual proofs of the legality of political participation:

Muslim political participation in western societies, including Muslim participation in current political parties, forming new parties and being involved in popular elections at all levels; council, parliament, and presidency is an Islamic duty and a civic duty. It is an Islamic duty since it enables Muslims to make Da'wah, enjoin good, forbid evil, protect Muslim accomplishments, achieve as many interests as possible, prevent as much harm as possible, elect the best candidates for representative committees and elect the best or the least harmful candidate for the office of presidency as he is committed to serve all people and establish justice among them and not to manipulate his position and collect illegal earnings and oppress people. The view is based on the Islamic well-known rule: "If the fulfilment of a duty is dependent on embarking on something this thing becomes a duty."⁷⁹ "Serious harm can be removed by less serious harm"⁸⁰ "Legislation is for the benefit of mankind in the near and the far future."⁸¹ "Shari'ah is entirely based on benefits: It either prevents harm or achieves a benefit."⁸²

Islamic Shari'ah's eagerness to achieve these rules is not dependent on Islamic leadership. Al-'Iz Ibn 'Abdesalam stated: "If disbelievers invade a great region, so they appoint a judge who is in charge of the Muslim issues of public interest, Muslims should allow this to achieve

79 Ibn Najeem, Al-Ashbah Wan-na-Thair, p91 also As-si-Uti, Al-Ashbah Wan-na-Thair, p97

80 Ibid

81 Al-Shatibi, Al-Muwafaqat, v2, p6

82 Al-'Iz Ibn Abdussalam, Qawa'id Al-Ahkam Fi Masalih Al-Anam, v1, p11

issues of public interest and prevent comprehensive harm, since far away from Shari'ah's mercy and its care for worshippers' interests are disabling public interests and accepting comprehensive harm because the one in charge is not fit for it." He draws nigher to our contemporary situation stating: "If rulers are of various levels of lewdness, we should appoint the one having the lowest level." He explains: "If we appoint another person we will lose what we cannot dispense with. Islamic interests should not be sacrificed unless there is no other alternative. Allah said: "So keep your duty to Allah as much as you can." He then sanctions: "war with a non-religious ruler to support his ruling and position to prevent a more non-religious ruler that causes more harm to Muslims from power."⁸³ This is a clear indication of Muslim positive political participation in all circumstances and at the highest level i.e. war. What, then, about political participation that is limited to political work?

3- Deliberation on Objections against Political Participation:

First: Political participation means accepting non-Islamic laws. This is not accurate. Non-Islamic laws for Muslims are classified into two categories:

First: Laws that do not contradict Islamic law. We have no problem in accepting them.

Second: Laws that contradict Islamic law. It is not permissible for Muslims to accept them and they should endeavour to change them through legal channels. This right is guaranteed by law in Western countries. At this point it should be highlighted that we are subjected to these laws whether we are involved in politics or not.

Second: Political participation contradicts the concept of Wala' and Bara'. This is not accurate either, since Bara' (disassociation) from

83 Ibid v6, p66

non-Islamic belief has nothing to do with political participation and laws. Moreover, in the West the state is segregated from religion. If a Muslim joins parliament through his political participation and then the parliament enacts a law against Islam, it is sufficient for the Muslim to protest against it and endeavour to convince other members. By doing this he has fulfilled his duty even if he fails. He struggles with his tongue to change it but fails. This means he is better than others who lag behind and do not take part in politics and condemn the laws in their heart as this is the third category of struggle as stated. If a Muslim becomes a Minister, his implementation of these non-Islamic laws is part of his job. If his intention of acquiring this position is to help the oppressed, spread good and justice among people as much as he can, his job is permissible. Ibn Taymiya said: "If one becomes a general ruler or a ruler or in charge of an office e.g. president, judge, etc and he cannot fulfil his duties and shun prohibitions, but he endeavours to fulfil his obligations and shun prohibition intentionally as much as he can and no one else does this, it is permissible and it might be an obligation on him to acquire this position." Ibn Taymiya also stated: "If acquiring this position is not an obligation but people holding this position commit oppression, yet he acquires it intending to relieve oppression and minimize it, it will be good. The sins that he commits intending to stop more serious sins will be good acts."⁸⁴

Third: Muslims should endeavour to implement Shari'ah and not to participate in applying non-Islamic legislation and laws. This is not accurate either. Full operation of Shari'ah is the principal goal of every Muslim and it is the Muslims' goal in Muslim countries. Nevertheless, limiting Muslim political work is not right. Islamic political work is caring for Muslim congregational affairs regardless of place and the surrounding circumstances. If Shari'ah is applicable, political

work operates it in a good way and uses it to achieve justice for all people etc. Muslims could be a minority, so they cannot have setting up an Islamic rule as their political target. In such circumstances the political target could be freedom that enables them to make Da'wah. In addition, they might have other objectives. If it is normal for Muslims to be involved in politics in Muslim countries after the collapse of the Muslim Caliphate to set the reapplication of Shari'ah or completing its application as a target, it does not necessarily mean that this should be the target for Muslims worldwide. When he was in Mecca the Prophet, peace be upon him, declared Da'wah many times as his political target.

Fourth: Muslim political participation benefits non-Muslims and causes harm to Muslims. This is inaccurate too. Muslim political participation with corrupted Muslims and non-Muslims is not permissible unless it is useful. In other words, it should achieve legal interest or prevent harm or corruption. Usefulness is not limited to the situation where Shari'ah is fully implemented. Nevertheless, in my opinion Muslim political participation aims to achieve the effectiveness of as much Shari'ah as possible reached on the basis of agreement with others. Allah said: "*Be dutiful to Allah as much as you can.*" (Trans. 64:16) If the Muslim cannot operate Shari'ah fully then he is excused. Allah said: "*Allah burdens not a person beyond his scope.*" (Trans. 02:286) But no Muslim is excused if he does not hold fast to what is within his capability. The above-mentioned Hadith about the ship supports the permissibility of participation and cooperation with others. This is also supported by the Al-Fudul Treaty mentioned in all history books and in Muhammad's biography. The Prophet Muhammad, peace be upon him, said: "I witnessed in Abdullah Ibn Jad'an's house a treaty dearer to me than owning the entire world. If I am invited therefore after Islam, I will attend it."⁸⁵

84 Ibn Taymiya, Al-Fatawa

85 Refer to Al Tabari.

Fifth: Political participation is conducted in secular systems and Muslims should only participate in an Islamic system. That is inaccurate. Western countries chose to set up their political systems according to secular democratic principles. They made this choice after a dark history of dictatorship practised by kings, patriarchs and religious men. Nowadays, Muslims residing in western countries enjoy religious freedom, human rights and the rights of citizenship according to western secular democratic principles. They are also subject to corruption and deviation resulting therefrom. They have accepted to live in these countries. Hence, they are subjected to all laws emanating from these principles regardless of their conformity or non-conformity with Islamic rules.

According to these laws Muslims have the right of political participation in systems based on these principles. Had shunning participating in politics delivered Muslims out of these systems to Muslim systems, it could have made sense. But shunning participating in politics, while remaining as citizens or residents means that a Muslim accepts living in a non-Muslim society and being subjected to the systems effective therein while he does not think of demanding his rights and benefits or even others' rights. It means he does not care for forbidding evil within his capacity while cooperating with others. This is not logical and Islamically it is not legal and does not occur. All Muslims demand their personal rights as individuals in light of these systems. How then do they, in the name of Islam, refrain from demanding their congregational rights as a group or as Muslims? How can they, in the name of Islam, forbid demanding reformation as much as possible? Allah said: *"I only desire reform to the best of my power."*(Trans. 11: 88) How can a Muslim be commanded in the name of Islam to be quiet about corruption or even just condemn it

by word and not exerting efforts to change it. Allah said: *"And Allah likes not mischief."*(Trans. 02:205)

Sixth: Political participation is practised in light of democracy, which is a system of disbelief. Hence, it is not permissible. This is inaccurate. Western democracy is a human innovation to prevent dictatorship, protect human rights and freedom and to subject the ruling authority to an independent popular and juridical control to prevent corruption. Islam preaches these issues as well, yet Muslims' experience in this regard has been seldom successful for known reasons. If democracy, according to its people, means people's rule against dictatorship, why do we convert it into the people's rule against Allah's rule and then classify it as forbidden? In fact Allah's rule will be distorted if practised by dictators. The Prophet Muhammad, peace be upon him, forbade leading a prayer by a man disliked by people. What then if he leads them in terms of their livelihood? On the other hand, Allah's rule could be practised by Muslims holding fast to Allah's religion, so they will be closer to justice, accomplishing people's interests and forbidding corruption. When people are Muslims, then they naturally choose Allah's rule as legislation for them and elect the best from among Muslims to apply it. Hence, Muslims can accept the democratic mechanism and apply it in light of Islam i.e. adhering to certain fixed Islamic rules. Such attitudes can be assumed by Muslims in western countries as Muslims do in Muslim countries.

In conclusion I state that secularism, meaning segregating state from religion, is an anti-Islamic principle. Islam unites religion and state in a divine methodology that aims at achieving man's happiness in this life and the life to come. In the West, people resorted to secularism to obliterate the problem of religious and denominational fanaticism and to get rid of political control practised by religious men in the name of religion. So we

cannot ask them to give up the secularism that saved them from serious backwardness and disasters. Nevertheless, we can invite them to Islam as a comprehensive lifestyle. If they accept it, it will resolve all problems but in a different way. We are not against the secularism practised in Europe since it was the possible solution to solve European peoples' problems. For them it is an alternative to the religious men's political control. It is not suggested as an alternative to Islam as it is in Muslim countries. We deal with situations resulting from it in the West as a fact achieving justice among all religions. This does not stop us from inviting people to Islam as a complete way of life aiming at preserving human unity, societal unity and the unity of state and religion through divine guidance and human nature. This does not stop Muslim resistance against secularism in Muslim countries as it is promoted to marginalize Islam that unites religion and state, solves the problem of religious fanatics and the control practised by religious men in a different way.

Forth Chapter

Integration in European society

Integration in European society

Integration is a term applied by many Europeans to refer to immigrants residing in their countries in order to assimilate them in the societies where they live especially in terms of lifestyle, available freedoms, human rights, norms and traditions.

There is no doubt that since the beginning of the 20th century many Muslim immigrants have been assimilated in Europe. Due to the worldwide spread of the Islamic awakening, this situation has been changed since the seventies of the last century. In Europe Muslims declared the slogan “integration but no assimilation” as a response to European governments’ slogan encouraging assimilation. To encourage Muslim movement from “isolation”, which was and is still being observed by radical Muslims, to openness and participation I wrote this chapter evolving around two foci:

First: Auxiliary Islamic Foundations of Integration:

1- Muslims’ love for non-Muslims:

Many Muslims will be astonished to see any type of love in a Muslim’s heart for non-Muslims. In our great literature it is stated that relations between Muslims and non-Muslims are based on hatred and abhorrence. This concept is based on many authentic famous Islamic texts e.g. “Whoever gives for Allah’s sake, withholds for Allah’s sake, loves for Allah’s sake and hates for Allah’s sake has perfected his religion.”⁸⁶

These texts have been so confirmed by long decades of wars and abhorrence that many contradicting manifest texts have disappeared. Exemption was so seldom that it disappeared. Hence, I have no other option but to quote texts indicating the possibility of love between Muslim and non-Muslim. These texts provide a clear proof of permissibility:

Allah said: *“Lo! You are the ones who love them but they love you not,*

86 Abu Dauud, Kitab As-Sunnah and Tirmizi, Kitab Sifat Al-Qiyamah and categorised it as Good Hadith

and you believe in all Scriptures, while they disbelieve in your Book. And when they meet you, they say, "We believe". But when they are alone, they bite the tips of their fingers at you in rage. Say: "Perish in your rage. Certainly, Allah knows what is in the breasts (all secrets)." (Trans. 03:119) This verse refers to the Jews according to some Muslims exegeses, whereas according to others it refers to hypocrites. Attabari stated in his commentary on this verse: "If a hypocrite is able to do what a believer can do he will devastate the believer's life, yet the believer may love the hypocrite and have affection and mercy for him."⁸⁷

Sheikh Muhammad Rashid Rida stated in his commentary on this verse: "The love some Companions had for Jews who betrayed them and the fact that the Qur'an approved thereof highlight the Islamic profound impact on the Muslims' heart and attests to the fact that Islam is a religion of love, mercy and tolerance."⁸⁸ Sheikh Rida in his detailed commentary also stated: "Based on that the level of man's love, flexibility and mercy is equivalent to the level of his faith and its authenticity. Why not when Allah said: "Lo! You are the ones who love them but they love you not". This is the argument we present to those who purportedly claim that our religion encourages us to hate others."⁸⁹ Nonetheless, your love for Muslims is not like your love for non-Muslims. There is a big difference. You love a Muslim for the sake of his belief in Allah and His messenger and for his adherence to the true belief even though you may have not met him and you have no blood relations with him and no worldly benefit either. You love him for the sake of Allah because of the faith that unites you. Even if you disagree with him, his love remains in your heart perpetually.

As for your love for non-Muslims, it is formed on a different basis. He

87 Attabari, Exegesis

88 Al-'Iz Ibn Abdussalam, Qawa'id Al-Ahkam Fi Masalih Al-Anam, v1, p11

89 Al-'Iz Ibn Abdussalam, Qawa'id Al-Ahkam Fi Masalih Al-Anam, v1, p11

might be truthful, so you love his truthfulness. He might be honest, so you love his honesty. In all circumstances you love his being guided. You may have these feelings towards non-Muslims. They are different from loving for the sake of Allah that you can only have for Muslims. Your love for Muslims is not dependent on anything, whereas your love for non-Muslims should be dependent on something. Regarding the captives of the battle of Bader, the Prophet, peace be upon him, said: "Had Mut'am Ibn 'Udai been alive and requested releasing these impure captives I would have released them for his sake."⁹⁰ This indicates the Prophet's gratitude to Mut'am Ibn 'Udai for the protection he granted the Prophet, peace be upon him, when he returned from At-Ta'if and for his role in tearing up the document of boycott, yet he was an idol worshipper. This Prophet's feeling towards Mut'am reflects a natural love for courageousness and chivalry but not a creedal love."

Second:

Allah said: "*And among His Signs is this, that He created for you wives from among yourselves, that you may find repose in them, and He has put between you affection and mercy. Verily, in that are indeed signs for a people who reflect.*" (Trans. 30:21) A Muslim man loves his wife even if she is from the people of the Book. It is Allah who has put this love in his heart. Why then would Allah forbid it? Is it possible to allow the Muslim man to marry a woman from the people of the Book and then command him not to love her? This is not acceptable. Had he been not allowed to love her, it would have been forbidden to marry her.

Third:

Allah said: "*Say: If your fathers, your sons, your brothers, your wives, your kindred, the wealth that you have gained, the commerce in which*

90 Al-Bukhari, Sahih Al-Bukhari, Abwab Al-Khams, Bab Ma Manna An-Nabi Ala Al-Asara Men Ghair An Ukhmis

you fear a decline, and the dwellings in which you delight are dearer to you than Allah and His Messenger, and striving hard and war in His Cause, then wait until Allah brings about His Decision (torment). And Allah guides not the people who are Al-Fâsiqûn (the rebellious, disobedient to Allah)." (Trans. 09:24) This indicates clearly that love for Allah and His messenger does not cancel other types of love, yet it is given priority. These verses make a reference to relations based on maternity, paternity, filial duties, marital duties, citizenship and interests represented in wealth and trade and accommodation or residence. The application of the term "dearer to you" gives an indication of the permissibility of these links and the innate love resulting therefrom. It also indicates clearly the impermissibility of this love if it is greater than our love for Allah and His messenger. It is an Islamic obligation that one's love for Allah and His messenger be greater than all other types of love. In the case of conflict between love for Allah and His messenger and any other type of love, priority should be given to loving Allah and His messenger and abiding by Islamic rules. If there is no contradiction, a Muslim can harbour all above-mentioned types of love.

Fourth:

Allah said: *"You will not find any people who believe in Allah and the Last Day, having love and nearness with those who oppose Allah and His Messenger even though they were their fathers, or their sons, or their brothers, or their kindred (people). For such He has written Faith in their hearts, and strengthened them with Rûh (proofs, light and true guidance) from Himself. And He will admit them to Gardens (Paradise) under which rivers flow to dwell therein (forever). Allah is pleased with them, and they with Him. They are the Party of Allah. Verily, it is the Party of Allah that will be the successful."* (Trans. 58:22) This verse forbids Muslims from having love and nearness with disbelievers who oppose

Allah and His messenger and fight against Islam and Muslims. As for a disbeliever who neither opposes Allah and His messenger nor fights against Allah and His messenger while having good characteristics and great values, there is no harm that we appreciate these characteristics and values since they are the remaining parts of his human nature and they are Islamically acceptable. Moreover, the Prophet, peace be upon him, described these values as the foundations of his message: "I have been sent to perfect morals."⁹¹ This means that the morals were there and the Prophet, peace be upon him, was sent to perfect them.

In his exegesis, Al-Shaukani stated that the above-mentioned verse was revealed when the father of Abu 'Ubaidah Ibn Al-Jarrah was killed in the battle of Badr.⁹² According to Al-Qurtubi, this verse was revealed in relation to Hatib Ibn Balta'ah who wrote a message to the Meccans informing them of the Muslims' march towards Mecca. As a reason of its revelation or as an explanation, he also mentioned the story of Abu Bakr when he asked his son to duel with swords and the story of 'Umar Ibn Al-Khattab when his uncle Al-'Asi Ibn Hisham was killed and the attitude of Ali and Hamzah when they killed 'Uqbah, Shaibah and Al-Waleed. All these stories prove the argument that love is forbidden if it is for the disbelievers in war against Allah and His messenger.

In light of the above-mentioned, one can state that there are two types of love; innate love and creedal love:

Innate love is based on desires and lusts. Allah said: *"Beautiful for men is the love of things they covet; women, children, much of gold and silver (wealth), branded beautiful horses, cattle and well-tilled land. This is the pleasure of the present world's life; but Allah has the excellent return (Paradise with flowing rivers) with Him."* (Trans.

91 Al-Hakim, Kitab Tawarikh Al-Mutaqaddemeen min al-anbiya' walmursaleen

92 Al-Shaukani, Tafseer Fath Al-Qadeer, Cairo, Al-Babi Al-Halabi, v5, p194

03:14) The Prophet, peace be upon him, said: “among the pleasures of this world perfume and women have been made dear to me. Prayer has been made a delight for me.”⁹³ Imam Ghazali described this type of love saying: “It is an innate love and a desire of the inner-self. It is expected from disbelievers. If it is related to an evil target, it becomes an evil action and if not it is permissible, yet not condemned or praised.”⁹⁴ Love between Muslims and non-Muslims is included in this category. A Muslim man may love a non-Muslim woman for her beauty or her character. This is an innate love. This type of love is condemned if associated with something forbidden in Islam e.g. Khulwah⁹⁵, the forbidden intermingle and adultery or fornication. It could be permissible if it is associated with something permissible e.g. marriage. One may love a person for his character, mental talents, blood relations, worldly interests or a familiarity that one has with him. If this type of love is not associated with a prohibition it will be permissible. Abdullah Ibn Abdullah Ibn Abi As-Sahabi As-Salih loved his father and his being guided, yet his father was a hypocrite. The Prophet, peace be upon him, commanded Abdullah to be kind to his father. But his innate love did not drive him to support his father against Muslims. Had he done so it would have been classified as a condemned love. On the contrary, he supported Islam against his father as it occurred after the battle of Bani Al-Mustaliq.

Creedal love signifies loving Allah, His messenger and loving others for Allah’s sake. This type of love is one of the outcomes of faith constituting a part of the Muslim’s creed. It is deemed to be an Islamic mandate. It is obligatory on Muslim to love his/her Muslim brothers

93 Reported by At-Tirmidhi, Ahmad and Al-Baihaqi in Sunan. At-Tabarani, Al-'Ausat

94 Ihya' 'Ulum Ad-Deen, Ma'na Al-'Ukhuwah Fillah wa tamiizuha Anil'ukhuwah Fiddunia

95 Privacy of a man and a woman who are not married and do not have blood relations or other relations that prevent them from marrying one another.

and sisters even though no blood relations, in-law relations, harmony or worldly interests unite them. The Prophet, peace be upon him, described it as one of the means through which one tastes the sweetness of faith saying: “That one loves his/her Muslim brother/sister for naught, but for the sake of Allah”.⁹⁶ He, peace be upon him, stated that among the people who will enjoy Allah’s shade in the hereafter are “two people who loved one another for Allah’s sake. They are united for His sake and they are separated for His sake.”⁹⁷ He, peace be upon him, also said: “You will not enter paradise until you believe and you will not believe until you love each other.”⁹⁸

2- Nowadays Europe is Daru ‘ahd (a land of treaty) and not Daru Harb (a land of war):

Let us commence by illustrating some Islamic terms, e.g. every disbeliever is a fighter, originally relations between Muslims and non-Muslims are based on wars etc, applied in our Islamic literature, which were justified by certain circumstances and then changed, yet many Muslims still apply them according to their initial significance in spite of the fact that the context is different. The danger of such terms lies in deeming them fixed principles and not subject to certain circumstances. Considering a disbeliever to be a fighter means the permissibility of killing him and confiscating his wealth and applying the rules of war with him in terms of the permissibility of lying and deceiving in addition to hatred and abhorrence. Muslim Jurists, who repeat these terms, consensually agree that treaty terminates the state of war. In the past treaties were so rare that they did not affect the application of these terms. As for today, Muslim countries have entered with all other countries into the convention of the United Nations that establishes

96 Al-Bukhari, Kitab Al-Iman, Bab Halawat Al-Iman

97 Al-Bukhari, Kitab Al-Jama'ah Wal-Imamah, Bab Man Jalasa Filmasjid Yantadhr

98 Muslim, Kitab Al-Iman

peaceful coexistence among countries and peoples. The state of war, which might occur from time to time, has become rare. Hence, not every disbeliever is a fighter. In fact nowadays most of the disbelievers have treaties with Muslims. It is no longer true that originally relations between Muslims and non-Muslims are based on wars since adhering to the convention signed by all Muslim countries makes peace the norm.

3- Is every disbeliever a fighter?

A disbeliever is not considered a fighter unless he or his state declares war against Muslims or if Muslims declare war against him or his country for legal reasons. Only in this case Muslims can apply the rules of war.

If war is not declared by either side as stated above, every disbeliever is a potential fighter. This is what Muslim jurists meant when talking about disbelievers as fighters since at that time it was the norm. So Muslims should beware of disbelievers until their state of war is terminated by a treaty. Then Muslims should abide by the rules of the treaty.

A Muslim may enter into a treaty with a disbeliever at individual level. They both should abide thereby. A disbeliever may enter into a treaty with the Muslim state. Muslim citizens of this state should adhere to this treaty and the disbeliever should hold fast to the Dhimmah treaty, which is a perpetual treaty. The security treaty, according to which non-Muslims enter a Muslim land, is a temporary treaty.

A Muslim may enter into a treaty with a non-Muslim country. The Muslim should abide thereby. This was the case of the Muslim merchants who entered non-Muslim land. This is the case of Muslims entering non-Muslim countries on the basis of visa. A Muslim country may enter into a treaty with a non-Muslim country. Muslims should abide thereby just like the Al-Hudaibiya treaty and the Convention of the United Nations signed by all Muslim countries. It confirms

that all countries have entered into a treaty of peaceful coexistence. Muslims, more than others, should fulfil their treaties. Allah said: *“And fulfil (every) covenant. Verily! The covenant will be questioned about.”* (Trans. 17:34) This confirms that in principle the state of war with disbelievers has been terminated by the Convention of the United Nations.

4- The Reason for Fighting is the State of War and not Disbelief:

Muslim jurists researched reasons justifying war against enemies in what is written on Jihad. The majority of the Maliki, Hanafi and Hanbali jurists stated that the reasons justifying war against enemies are state of war, war and transgression but not a mere disbelief.⁹⁹ According to one of the two opinions narrated about Ash-Shafi'i, the reason of war is disbelief. The opinion adopted by the majority of Muslim jurists is preponderant. It is based on the following:

There are many Quranic verses confirming that the reason for war against non-Muslims is transgression on Muslims. Allah said: *“And fight in the Way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not the transgressors.”* (Trans. 02:190) *“Will you not fight a people who have violated their oaths (pagans of Makkah) and intended to expel the Messenger while they did attack you first?”* (Trans. 09:13) *“and fight against the Mushrikûn (polytheists, pagans, idolaters, disbelievers in the Oneness of Allah) collectively, as they fight against you collectively.”* (Trans. 09:36) *“Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes.*

⁹⁹ Wahbah Az-Zuhaili, Athar Al-Harb Fe Al-Fiqh Al-Islami, Damascus, Dar Al-Fikr, p89. He referred to the following references: Fath Al-Qadeer, Fath Al-Ghaffar, Sharh Tanweer Al-Absar, Al-Mudawwanah, Bidaiat Al-Mujtahid, Ibn Taymiya, Risalt Al-Qital, Albuti, Al-Jihad Fi Al-Islam, Damascus, Dar Al-Fikr, p94, quoting Al-Mughni by Ibn Qudamah, Fath Al-Qadeer by Ibn Hisham, As-Sharh As-Sagheer Ala Aqrab Al-Masalik and Mughni Al-Muhtaj

Verily, Allah loves those who deal with equity.”(Trans. 60:08) Most of the Islamic Authenticators consensually stated that the above-mentioned verses are not abrogated.

A great number of authentic Ahadith forbid the killing of disbelievers when they do not take part in war or they are not able to fight. For instance, the Ahadith that prohibit the killing of women and children because they do not fight. This meaning has been narrated by Al-Bukhari, Muslim, Abu Dauud, Ibn Majjah and others. Abu Dauud and Ibn Majjah¹⁰⁰ reported that killing service staff members, e.g. farmers, factory workers, road cleaning workers, doctors, nurses and hospital staff, is forbidden. In his Sunan, Abu Dauud narrated it is forbidden to kill old people too.

Since the reason for fighting is a state of war and not disbelief, Abu Bakr commanded his army not to approach people isolated in places of worship and not to kill women, children and aged people.¹⁰¹ Al-Baihaqi narrated that Jaber said: “They did not kill disbelieving merchants.”¹⁰² ‘Umar Ibn Al-Khattab said: “Be dutiful to Allah regarding farmers. Do not kill them unless they declare war against you.”

Had war been permissible for mere disbelief, it would have been contradictory to the non-compulsion in religion. Regarding this matter, Muslim scholars have no differences. Allah said: “*There is no compulsion in religion. Verily, the Right Path has become distinct from the wrong path.*”(Trans. 02:256) “*So, will you (O Muhammad) then compel mankind, until they become believers.*”(Trans.10:99) “*Then whosoever wills, let him believe; and whosoever wills, let him*

100 Sahih Sunan Abu Dauud, Hadith No. 2324, Sahih Sunan Ibn Majjah, Hadith No. 2294

101 Al-Mudawwanah, v2, p7 and also Tarikh At-Tabari

102 Al-Baihaqi, As-Sunan Al-Kubra, Kitab As-Siyar, Bab Tarq Man La Qital Feeh Min Ar-Ruhban Walkabeer wa Ghairihima

disbelieve.”(Trans. 18:29) “*To you be your religion, and to me my religion.*”(Trans. 109:06) It has been authentically narrated that the Prophet, peace be upon him, had captured many idol worshippers, yet he did not compel them to embrace Islam. He, peace be upon him, killed some of them for reasons other than disbelief. He, peace be upon him, accepted a ransom from some of them and released some for free. Had killing them been an obligation, the Prophet, peace be upon him, would not have let them go.

5- Original foundations for Muslim non-Muslim relations:

Are the relations between Muslims and non-Muslims initially founded on wars? Yes.¹⁰³ This is the answer given by the majority of Muslim jurists, yet they did not mean what many people misconstrue nowadays. If we thoroughly consider the opinion of the majority of Muslim scholars in light of present time we will come to one conclusion. They mean relations between Muslims and non-Muslims are initially based on potential war and not war. This is significantly clear from the rules they mentioned pertinent to removing the description of war for the simplest reason.

A person in a state of war with Muslims attains a security treaty from any mature sane Muslim even if it be a mature child. According to Malik, Ahmad and Muhammad Ibn Al-Hassan, a child is mature if he/she is older than seven years old.¹⁰⁴

What happens if a person in a state of war enters the land of Islam? The first answer striking our mind is that he should be killed as he is in a state of war and has no security treaty.

But Muslim jurists state that if the person in a state of war says that

103 Abelkareem Zidan, Majmu'it Buhuth Fighiya, p54. Wahbah Az-Zuhaili, Athar Al-Harb Fi Al-Fiqh Al-Islami, p113

104 Al-Mausu'ah Al-Fiqhiyah, Bab Ahlulharb, v7

he enters a Muslim land to listen to the Qur'an or that he enters as a messenger, regardless as to whether he has a message or not, or that he enters on the basis of a security treaty granted by a Muslim, while having no witnesses to prove it, he is entitled to safety as his claim could be true and his intention gives him a security independent on reassurance. This opinion is adopted by the Shafi'i and the Hanbali Schools. According to the Maliki School, he should be returned to his place of safety unless there be a proof of lying. According to the Hanbali School, since they are often available he should be asked to provide witnesses.¹⁰⁵ Although all Muslim jurists perceive his case as a state of war, none of them stated that he should be killed as he is a disbeliever in a state of war.

A disbeliever in a state of war turns into a Dhimmi by mutual agreement or residence in the land of Islam for one year.¹⁰⁶ So a disbeliever in a state of war in the above-mentioned cases is neither treated with war morals nor is he subject to war rules. This confirms our understanding of the Muslim jurists' sentence "Relations between Muslims and non-Muslims are initially based on potential war."

In my opinion relations between Muslims and non-Muslims are initially based on peace and not war for the following proofs:

Allah sent His messengers to all people. Allah said: "*And there never was a nation but a Warner had passed among them.*" (Trans. 35:24) Allah limited His messengers' mission to conveying His message. Allah said: "*Then! Are the Messengers charged with anything but to convey clearly the Message?*" (Trans. 16:35) In addition, the Prophet Muhammad, peace be upon him, was commissioned with education and purification. Allah said: "*He it is Who sent among the unlettered*

105 Ibid

106 Ibid

ones a Messenger from among themselves, reciting to them His Verses, purifying them, and teaching them the Book and Al-Hikmah (As-Sunnah: legal ways, orders, acts of worship of Prophet Muhammad. And verily, they had been before in manifest error." (Trans. 62:02) There is no doubt that peace is the ideal situation with disbelievers, as the Prophets fulfilled their duties in terms of conveying divine revelation, education and purification.

Prior to the legislation of Jihad and assigning it as an obligation on Muslims as a means of protection for Muslims and Islamic Da'wah, Allah commanded Muslims to make Da'wah before and after wars since it is their original and first mission. In an authentic hadith reported by Muslim and others it is stated that when the Prophet, peace be upon him, appointed a commander for the Muslim army. He commanded him: "Invite them to Islam. If they accept it, leave them alone." When the Prophet, peace be upon him, deployed Ali to fight against Jews he said to him: "Invite them to Islam and explain to them their divine obligations. By Allah, if Allah guides one person through you it will be better for you than the entire world."¹⁰⁷ Belief in Allah and worshipping him are not by force but by invitation and free choice. A peaceful atmosphere is more convenient thereto than war that stirs desires under the guise of self defence.

The term Al-Asl (initially) applied by Muslim jurists "Relations among human beings are initially based on peace or war" means OLDER THAN, MORE IMPORTANT THAN or INITIALLY.

If it means "OLDER THAN" then Al-Asl is peace according to the consensus of Muslim jurists who state the obligation of starting with Da'wah before war, yet a few Muslim jurists expressed the permissibility of war against disbelievers even if they have not heard of Islam. But

107 Al-Bukhari, Kitab Fada'il As-Sahabah, Bab Manaqib Ali Al-Qurashi Al-Hashimi

these few jurists overlook and contradict axiomatic Islamic rules. Imam Nawawi described their opinion as invalid.¹⁰⁸

If it refers to “MORE IMPORTANT”, peace sometimes is more important or even a more serious obligation, yet war is more important in certain circumstances. Wise people do not disagree on that. How come then jurists disagree on it?

If it signifies “INITIAL”, then initially relations among human beings are based on peace since it is the best atmosphere for Da’wah and it is the foundation of recognition ordained by the Lord of the worlds. Allah said: “and made you into nations and tribes, that you may know one another.”(49:13) Moreover, peace is essential for trade permissible in a land of war according to the consensus of Muslim jurists.

According to jurists of the old time and contemporary jurists war has been legislated for in Islam for two reasons:

First: To defend Muslims. Allah said: “*And fight in the Way of Allah those who fight you, but transgress not the limits. Truly, Allah likes not the transgressors.*”(Trans. 02:190)

Second: To remove Fitnah (to defend freedom of faith). Allah said: “*And fight them until there is no more Fitnah*”(Trans. 08:39) This means that Muslims are not allowed to fight unless it be for one of these two reasons. This confirms that relations among human beings are initially based on peace and not war.

Nevertheless, some jurists of the old time and some contemporary jurists stated that fighting is permissible for Muslims in order to subject non-Muslims to an Islamic regime while observing the right of freedom of faith. In my opinion this view is inaccurate since it contradicts the Quranic principle “*Let there be no compulsion in religion.*” Religion

includes belief and systems. In my opinion, to subject non-Muslims to an Islamic system is not permissible in principle since it compels non-Muslims to accept part of Islam. It has never happened that non-Muslims were compelled to accept Islamic worldly rules except after wars waged by non-Muslims. This was done to uproot the reasons for war and instil peaceful relations among people. It could have happened as a result of accepting the Dhimmah treaty.

108 Sahih Muslim, Sharh An-Nawawi, v7, p309

Detailed rules of integration

In this study I will elaborate on a number of the detailed auxiliary Islamic rules on integration pertinent to the social life of Muslims residing in a non-Muslim land:

1- Greeting non-Muslims: it has been widely circulated among Muslims that it is not permissible for Muslims to greet non-Muslims. This opinion is based on an authentic hadith in which the Prophet, peace be upon him, said: “Do not greet the Jews and the Christians ----”¹⁰⁹ This opinion is adopted by the majority of the Muslim jurists. Nonetheless, the permissibility of greeting Jews, Christian and polytheists has been reported by many early Muslim predecessors e.g. Ibn Mas’ud, Abu ‘Umamah, Abu Ad-Darda’, Ibn ‘Abbas, ‘Umar Ibn ‘Abdelazeez, Sufian, Ibn ‘Uyinah, Al-‘Auza’i, An-Nukh’i, Ibn Muhareez, Ash-Shu’abi and Attabari. This opinion was adopted by Sheikh Shanqiti as stated in his book Al-Baian. It was also adopted by Sheikh Rida in his book Al-Manar. In spite of the fact that the preponderant opinion in the four schools of Fiqh is the prohibition of initiating a greeting to non-Muslims, many jurists in the four schools of Fiqh described it as permissible. Ibn ‘Abdeen narrated that some of his sheikhs said: “There is no harm in starting a greeting to non-Muslims.”¹¹⁰ Annawawi reported that Al-Marudi said: “An opinion expressed by some of our scholars that it is permissible to start a greeting to non-Muslims.”¹¹¹ Ibn Al-Muflih narrated that some scholars did not perceive it as forbidden.¹¹²

Due to the paramount importance of this issue for Muslims living in the Europe, I wrote a leaflet entitled “Greeting the people of the

109 Muslim, Kitab A;-Adab.

110 Ibn ‘Abdeen, Hashiat Ibn ‘Abdeen, v5, p264

111 An-Nawawi, Sharh Sahih Muslim, v14, p145

112 Ibn Miflih, Al-Adab Ash-Shariyah, v1, p412

Book”. In this leaflet I elaborated on the various opinions expressed by Muslim jurists and their justifications. In the conclusion I stated that the prohibition of starting a greeting to non-Muslims was due to the state of war between Muslims and the tribe of Quraizah. The narration of the above-mentioned hadith should be understood in light of two narrations:

Abi Basrah narrated that the Prophet, peace be upon him, said: “We are marching against Jews, so do not start greeting them.”¹¹³

Abi ‘Abderrahman Al-Jahni narrated that the Prophet, peace be upon him, said: “Tomorrow I will march against Jews, so do not start greeting them.”¹¹⁴ These two narrations are mentioned in Musnad Ahmad and At-Tabarani. They are authentic narrations. The only way to match the three narrations is the perception that the prohibition is limited to the period of the state of war¹¹⁵, as confirmed by other narrations.

As for returning a greeting initiated by non-Muslim, Muslim jurists consensually stated that it is incumbent upon Muslims to do so. Regarding returning a greeting said by people of the Book, Ibn Al-Qayiam said: “According to Islamic rules and proofs, Muslims should return the greeting. This is justice. Allah commands people to be just and kind. Allah said: *“When you are greeted with a greeting, greet in return with what is better than it, or (at least) return it equally.”* (Trans. 04:86) Allah encourages people to return a greeting with what is better and makes it incumbent upon them to return it equally.”¹¹⁶

2- Standing up for non-Muslims, shaking hands with them, hugging them and congratulating them on their festivals: These issues are

113 Musnad Ahmad

114 Ibn Majjah, Kitab Al-Adab, Bab Rad As-Salam Ala Ahlu-dh-Dhimmah

115 Judge Sheikh Faysal Maulawi, As-Salam ‘Ala Ahlulkitab, Cairo, Al-I‘lam Al-‘Arabi Centre

116 Ibn Al-Qayiam, Ahkam Ahl-udh-Dhimma, v1, p199

originally part of people's traditions. If Muslims coexist with non-Muslims in one society, then they are not in a state of war, but rather a state of security treaty founded on the Quranic verse in which Allah said: *"Allah does not forbid you to deal justly and kindly with those who fought not against you on account of religion and did not drive you out of your homes. Verily, Allah loves those who deal with equity."* (Trans. 60:08) Hence, standing up for non-Muslims, shaking hands with them and hugging them should have the original Islamic permissibility. They have not been described as forbidden in any part of Islamic literature. They could be recommended if perceived as auxiliary tools of Da'wah. They are included in righteousness and kindness, which Muslims are allowed to exercise with non-Muslims. In fact Muslims are commanded to abide thereby. The same thing can be said about congratulating non-Muslims on their religious and national feasts. It has become a social norm and equal treatment. Nevertheless, when congratulating them one should not say what is deemed to be acceptance of non-Islamic occasions.

3- Visiting non-Muslims, visiting sick non-Muslims, attending their funeral and offering condolences to them: These issues are originally part of people's traditions. Abiding thereby is covered in the scope of righteousness and kindness according to which Muslims deal with non-Muslims. They have not been described as forbidden in any part of Islamic literature. If some jurists classified them as forbidden or disliked, their opinions are described as abnormal. They might be relevant in certain context. Al-Bukhari and others narrated that when the Prophet's servant, who was a Jewish boy, got ill, the Prophet, peace be upon him, visited him.¹¹⁷ The majority of the Muslim jurists consensually agree that attending non-Muslim funeral and offering condolences to non-Muslims are permissible.¹¹⁸

117 Al-Bukhari, Kitab Al-Jana'z, Bab Itha Aslama As-Sabi Famat Hal Usala 'Alaih.

118 Khalid Abdelqader, Fiqh Al-Aqalliyat Al-Muslimah, Lebanon, Dar Al-Iman, p576 quot-

4- Exchanging presents and sharing food with non-Muslims: These issues are part of the traditions that people apply when communicating with each others. They are permissible. This permissibility has been confirmed by Islamic texts. A number of Ahadith confirm that the Prophet, peace be upon him, accepted presents from idol worshippers and even from those who were in a state of war with Muslims. He, peace be upon him, gave presents in return. This is stated in Sahih Al-Bukhari, Sahih Muslim and others. According to authentic narrations, he, peace be upon him, ate food offered to him by Jews. He, peace be upon him, ate a piece of a poisoned sheep presented to him by a Jewish lady.¹¹⁹ The Qur'an states clearly the permissibility of the food of the people of the Book. Allah said: *"The food of the people of the Scripture (Jews and Christians) is lawful to you and yours is lawful to them."* (Trans. 05:05) As for a meal served at a table where alcohol or forbidden foods are served, Muslim should not share it. The Prophet, peace be upon him, said: "Whoever believes in Allah and the Last Day should not sit at a table where alcohol is served."¹²⁰ But if he has no other options or if there is a benefit then it is permissible to sit at this table.¹²¹

5- Other social relations:

Responding to a sneeze: If a non-Muslim sneezes, it becomes a duty on a Muslim to reply to his sneeze, provided he says "Allah be praised". Jews used to sneeze in the presence of the Prophet Muhammad, peace be upon him, hoping that he would say "May Allah bless you." The Prophet, peace be upon him, said: "May Allah guide you and reform your state."¹²²

ing Al-Bahr Ar-Ra'iq, v8, p231, Ruh Al-Ma'ani, v28, p75 and also Al-Musannif, v6, p117

119 Ibid, p579

120 Musnad 'Umar Ibn Al-Khattab, Abu Al-Ya'li Al-Musaili

121 Fiqh Al-Aqalliyat Al-Muslimah, p587

122 Abu Dauud, Kitab Al-Adab, Bab Kaifa Ushammat Adh-Dhmmi

The permissibility of Ruqiah¹²³ of non-Muslims: One of the Prophet's Companions did Ruqiah to one of the idol worshippers in return for a payment. The idol worshipper was cured. The Prophet, peace be upon him, approved of it.¹²⁴

Feeding non-Muslims from 'Udhiyah¹²⁵: According to the majority of the Muslim jurists, it is permissible to feed non-Muslims from 'Udhiyah either because they are poor, relatives or even as a present.

6- Imitating non-Muslims:

Many Muslims are confused about the forbidden imitation of non-Muslims and the permissible imitation. Some Muslims, according to their radical views, classify the forbidden imitation as an act of apostasy. The prohibition of imitating non-Muslims is based on a famous hadith in which the Prophet, peace be upon him, said: "Whoever imitates people then he is of them."¹²⁶ The majority of Muslim scholars consensually stated that imitating non-Muslims is disliked in general, yet it can turn into a prohibition, permissibility or obligation.

If imitating non-Muslims is pertaining to their acts of worship, then it is forbidden. For instance, it is forbidden to buy certain goods during non-Muslim festivals if one does not usually buy them. It is also forbidden to give them a present pertinent to that day. This is the forbidden imitation that can be described as an act of apostasy if one does it on the basis of glorifying non-Muslim festivals.

If a Muslim imitates non-Muslims' habits that have nothing to do with their religion, e.g. wearing Western clothes, it is permissible, yet if it is done on the basis of admiring them and imitating them, it turns into a

123 Religious texts recited to cure someone

124 Sahih Al-Bukhari, Kitab At-Tib

125 An animal sacrificed on one of the Muslims' festivals

126 Abu Dauud, Kitab Al-Libas, Bab Libs Ash-Shuhra

disliked act. Nevertheless, if a Muslim wears these clothes for a need or an interest, it will not be included in the scope of dislike. Ibn Taymiya said: "If a Muslim is in Dar-ul-Harb (land of war) or Dar-ul-Kufr (land of disbelief) which is not Dar-ul-Harb, It is not an obligation on him to be different to non-Muslims in terms of his appearance, since he will be harmed. Imitating their appearance may be a recommendation or an obligation if it serves his religious interests."¹²⁷

As for permissible commodities sold in the market on non-Muslim festivals, there is no harm in purchasing and selling them. Ahmad stated: "As for foods sold in the market, there is no harm in purchasing and selling them even if it means that Muslims facilitate them and prepare them well."¹²⁸

7- Marrying a woman from the People of the Scripture:

Allah said: "*Made lawful to you this day are At-Tayyibât (all kinds of Halâl (lawful) foods, which Allah has made lawful (meat of slaughtered eatable animals, milk products, fats, vegetables and fruits). The food (slaughtered cattle, eatable animals) of the people of the Scripture (Jews and Christians) is lawful to you and yours is lawful to them. (Lawful to you in marriage) are Al-Muhsanat (chaste women) from the believers and chaste women from those who were given the Scripture (Jews and Christians) before your time.*" (Trans. 05:05) According to the majority of Muslim jurists, Al-Muhsanat refers to chaste women whether they committed illegal sexual intercourse in the past or not and whether they are from a people in a state of war against Muslims or not.¹²⁹ But due to the repercussions of this marriage, these jurists and others consensually state that it is disliked to marry a woman from the

127 Ibn Taymiya, Iqtida' As-Sirat Al-Mustaqeem, v1, p176

128 Ibid, v2, p571, Ibn Miflah, Al-Adab Ash-Shar'iya, v3, p441

129 Tafseer books: At-Tabari, Al-Baghwi, Zad Al-Maseer, etc. Fiqh: Fath Al-Qadeer, Al-'Um, Al-Muqadimat, Nudhm-ud-Dur etc

people of the Book and reside in her land.¹³⁰ It is better for a Muslim man to marry a religious Muslim woman rather than just a Muslim woman. The Prophet, peace be upon him, said: “Marry the religious Muslim women.”¹³¹ Marrying a religious Muslim woman helps to run the house and bring up children according to Islamic rules. Marriage, in principle, is a personal matter based on understanding and harmony between husband and wife. Moreover, it is a social phenomenon confirming that should coexistence founded on mutual commitment between a husband and a wife having different faiths be viable, then the coexistence of a variety of communities in wider society is viable.

The fact that Muslim jurists classify mixed marriage as disliked does not contradict coexistence since this classification is based on reasons irrelevant to coexistence. The most important reason is family stability according to Islamic principles. For the same reason marrying non-religious Muslim women is not given priority and may be disliked.

8- Transactions:

It has been consensually stated by all jurists and Schools of Fiqh that all transactions permissible according to Shari’ah can be conducted between Muslims and non-Muslims.¹³² Allah said: “*Among the people of the Scripture (Jews and Christians) is he who, if entrusted with a Qintar (a great amount of wealth, etc.), will readily pay it back; and among them there is he who, if entrusted with a Dinar (a single silver coin), will not repay it unless you constantly stand demanding.*” (Trans. 03:75) Al-Bukhari narrated that the Prophet, peace be upon him, bought food from a Jew at a deferred price and gave his armour as a mortgage

130 Al-Bahr Ar-Ra’q, v3, p11, Ahkam Al-Quran, v2, p557, Ahkam Ahl-udh-Dhmmah, v2, p431, Al-Mabsut, v5, p50, Al-'Um, v4, p266

131 Al-Bukhari, Kitab An-Nikah, Bab Al-Akfa' Fiddeen

132 Khalid Abulqader, Fiqh Al-Aqaliyat Al-Muslimah quoting Mausu'at Al-Ijma', v1, p445

security.¹³³ The Prophet, peace be upon him, bought sheep from an idol worshipper.¹³⁴ Transactions are not affected by the fact that a non-Muslim’s wealth could be forbidden if earned illegally as long as a Muslim earns it legally. For him it becomes legal since “alteration of reason is like alternation of commodity.”¹³⁵

Transactions are not affected by the fact that all transactions in Europe are conducted on the basis of positive laws. In general these laws do not contradict Islamic rule except for usury, which Muslims should not approach so that transactions will be permissible. There is no necessity that one can imagine that drives a Muslim to accept usury. Hence, there is no exemption in this regard. As for paying usury, due to a necessity, Muslim jurists made an exemption from the Islamic rule on usury. Muslims can avail of this exemption when conditions thereof are fulfilled.

133 Al-Bukhari, Kitab Al-Buyu', Bab Shar' Ad-Da'am Ila Ajal

134 Ibid

135 Qa'idah No. 97 in Majalat Al-Ahkam Al-'Adlaiyah

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